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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
*Defendants.*

## BRIEF OF THE STATE OF FLORIDA IN OPPOSITION TO MOTION FOR JUDGMENT ON AMENDED COMPLAINT BY THE UNITED STATES

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UNITED STATES – GULF COAST
ALABAMA—MISSISSIPPI

# MISSISSIPPI SOUND AND APPROACHES
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SOUNDINGS IN FEET
AT MEAN LOW WATER

CAUTION
Improved channels shown by broken lines are subject to shoaling, particularly at the edges.

HEIGHTS in feet above mean high water.

AUTHORITIES
Hydrography and topography by the Coast and Geodetic Survey with additions and revisions from the Corps of Engineers.

ABBREVIATIONS (For complete list of symbols and abbreviations, see C. & G. S. Chart No. 1)
Lights—F. (fixed), Fl. (flashing), Gp. Fl. (group flashing), Alt. (alternating), Occ. (occulting), Int. (intensified), Vert. (vertical), Ec. (eclipse), Dia. (diaphone), Siren, Horn, Whistle, Bell, Gong, Mo. (morse), Ra. (radio), Ra. Bn. (radio beacon), Ra. Sig. (radio signal), Ra. Dir. (radio direction finder), Ra. Ref. (radio reflector), Ra. Aer. (radio aeronautical), Ra. Fog Sig. (radio fog signal), Ra. Range (radio range), Ra. Tr. (radio transmitting station), Ra. Str. (radio storm warning), Ra. Tel. (radio telephone), Ra. Weather (radio weather broadcast), Ra. Time (radio time signal), Ra. Dir. Sta. (radio direction finding station).
Buoys—Can, Nun, Spar, Lighted, Whistle, Bell, Gong, Horn, Gas, Radio, Ra. Ref., Ra. Sig., Ra. Bn., Ra. Dir. Sta., Ra. Tel., Ra. Weather, Ra. Time, Ra. Aer., Ra. Fog Sig., Ra. Tr., Ra. Str., Ra. Range, Ra. Dir.,

1007

# GULF OF MEXICO

Mercator Projection
Scale 1:2,182,500 at Lat. 26°

SOUNDINGS IN FATHOMS
AT MEAN LOW WATER

(For offshore navigation only)

Compiled from larger scale charts listed by the U. S. Coast and Geodetic Survey, Hydrographic Office, U.S.N., the British Admiralty and Junta Cooperativa Catastral.

ABBREVIATIONS (For complete list of Symbols and Abbreviations, see C. & G. S. Chart No. 1):
Lights: F. fixed, Fl. flashing, Gp. grpd., I. Qk. intermittent quick, Int. short-long, Occ. occulting, Alt. alternating, Gp. group, W. white, R. red, G. green, M. nautical miles, min. minutes, sec. seconds, abt. about, obscd. obscured, vsby. visibility, Bch. beacon, ×(6)+1 consecutive light, Ret. reflecting, D. destroyed, dis. discontinued.
Buoys: G. grn., R. red, B. black, A. black, R. red, W. white, Y. yellow, Or. orange, Str. streaked, T.S. temporary buoy.
Lights are white unless otherwise indicated.
Obs. daybeacon, R. red, W. white, R.Tr. radio tower.
C.G. Coast Guard Station, R.Stn. radiobeacon, U.S.C. distance finding station, R. Sign. radio range.
Bk. obks. Bk. rock, S. ground, Gn. grass, R. weed, G. weed, C. coral, Sh. shells, Co. coral, Sy. sand, Mo. mud, Sn. snag, wk. rock, wd. wreck, ch. patches, Bk. & Wh. Buoy, Bn. beacon, Ch. Buoy, wk. wreck, ch. patches.
Wreck, rock or obstruction except above to the depth indicated.
Shoals or rocks over which only kelp is found at least above datum of soundings.
P.A. position doubtful, D.A. existence doubtful, Obstr. obstruction, P.A. position approximate.

HEIGHTS in feet above mean high water.

CAUTION
Temporary defects in aids to navigation are not indicated on this chart except where a buoy replaces a lighted aid. See Notice to Mariners.

GULF STREAM CURRENTS
From investigations by the Coast and Geodetic Survey in 1936, 1946 and 1947.
The direction and velocity of the current are indicated at each station by arrows; the long arrow indicates maximum and the short arrow minimum velocity. Speed in knots.

| Locality of Current Stations | Time of max. velocity after Transit of Moon | Velocity |
|---|---|---|
| East of Florida Straits (6 stations) | 5 hr. | 2 kn. |
| South of Dubosq Shoal (5 stations) | 5 | 3 |
| Between Tortugas and Cuba (6 stations) | 5 | 2½ |

SUBMARINE OPERATING AREA
Submarines may be operating in the indicated area in the vicinity of Key West, Florida, vessels should proceed with caution

CAUTION
Numerous oil well structures exist in the water areas from Key West Florida to Brazos Santiago, Texas
See 1209 and 1100 series charts for locations

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

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No. 10, Original

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UNITED STATES OF AMERICA,
*Plaintiff*,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
*Defendants.*

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## BRIEF OF THE STATE OF FLORIDA IN OPPOSITION TO MOTION FOR JUDGMENT ON AMENDED COMPLAINT BY THE UNITED STATES

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# CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND LAWS INVOLVED

**This proceeding involves the title to and ownership of the lands beneath the Gulf of Mexico** within the historical boundaries of the State of Florida and the natural resources within such lands and waters and the right and power to manage, administer, lease, develop and use such lands and natural resources. Florida's claim to such lands and natural resources depends upon the Submerged Lands Act of May 22, 1953 (43 U. S. C. Supp. V, 1301, et seq.), the material portions of which are set out on pages 333-338 of the plaintiff's brief. The validity, construction and application of the said Submerged Lands Act, as it applies to the defendant states generally and not specifically and severally are considered, argued and presented in the joint and common brief of the several defendant states and will not be here repeated either in whole or in part.

**The term "lands beneath navigable waters,"** as used in the said Submerged Lands Act, includes those submerged lands beneath the Gulf of Mexico within the boundary of the State of Florida "as it existed **at the time such State became a member of the Union, or as heretofore approved by Congress,"** limited, however,

to not more than three marine leagues into the said Gulf of Mexico (43 U. S. C. Supp. V, 1301, subsection a-2; plaintiff's brief page 334). It is provided in section four of the said Submerged Lands Act that "nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided **by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.**" (43 U. S. C. Supp. V, 1312; plaintiff's brief page 337). (emphasis supplied).

**The above quoted portions of the Submerged Lands Act recognize those historical boundaries** of the Gulf States existing **"prior to or at the time such State became a member of the Union,"** or as **"approved by Congress" prior to May 22, 1953.** Florida contends that a boundary in excess of three geographical miles in the Gulf of Mexico existed under her constitution in force when she became a member of the Union (the Florida Constitution of 1838), and that a state boundary also in excess of three geographic miles was approved by the Congress in 1868 in connection with the reconstruction of the state following the Civil War.

**Boundaries heretofore approved by Congress.** —After the termination of the Civil War, Con-

gress by the Acts of March 2 and 22, 1867 (14 Stat. 428 and 15 Stat. 2, [appendix pages 1-8]) provided for the holding of state constitutional conventions in the rebel states, pursuant to which Florida caused to be prepared, submitted and adopted her State Constitution of 1868, which by Article I thereof fixed state boundaries as "commencing at the mouth of the river Perdido; from thence . . . , thence southwestwardly along the edge of the Gulf Stream and Florida reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from land; thence northwestwardly three leagues from land, to a point west of the mouth of the Perdido River; thence to the place of beginning." (appendix 18). This State Constitution was submitted to the Congress which, by the Act of June 25, 1868, (appendix 8-11) found that certain states, including Florida, had "framed constitutions of state government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same" and that such states were entitled to representation in Congress. This proceeding was an approval by the Congress of the boundaries of Florida as set out in her Constitution of 1868.

**Boundaries of Florida at time of admission to the Union.** — The Treaty of Amity, Settle-

ment and Limits, between the United States and Spain, of February 22, 1819, ceded to the United States (Article II thereof) "all the territories which belong to him situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said province," and in Article VI thereof further provided that "the inhabitants of the territories . . . shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution. . . ." Spain obtained the Floridas from Great Britain under the Definitive Treaty of Peace and Friendship of September 3, 1783, the King of Great Britain having, on October 7, 1763, by proclamation described the Floridas as being bounded by the Gulf of Mexico, "including all islands within six leagues of the sea-coast" (see pages 313 and 314 of the plaintiff's brief). The Act of Congress of March 3, 1845 (5 Stat. 742) admitting Florida to the Union, in section five thereof, provided that "the said State of Florida shall embrace the Territories of East and West Florida, **which by the Treaty of Amity, Settlement and Limits** . . . was ceded to the United States" (emphasis supplied). The Florida Constitution of 1838 (the statehood constitution) provided, in Article XII thereof, that "the jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which, by the Treaty of Amity, Settle-

ment and Limits . . . were ceded to the United States. . . ."

## QUESTIONS PRESENTED (FLORIDA)

**First question.**

**Is the United States entitled, as against the State of Florida, to the lands, minerals and other things underlying the Gulf of Mexico, between a line three geographic miles seaward from the ordinary low-water mark and from the outer limits of inland waters on the coast, and a line three marine leagues from said low-water mark and outer limits of inland waters?**

**Second question.**

**Is the United States entitled to an accounting by the State of Florida for any sums of money derived by it after June 5, 1950, from such lands, minerals and other things lying off her coast?**

## STATEMENT OF THE CASE AS TO FLORIDA

Responding to the statement appearing in plaintiff's brief (pages 3-11), Florida maintains that the Congress in 1868 by appropriate proceeding approved the Florida Constitution of 1868 (reconstruction constitution) which contained the boundaries of the State of Flor-

ida including its three marine league boundary in the Gulf of Mexico (Article I thereof) which approval brought said three marine league boundary (historic boundary) within the purview of the Submerged Lands Act. This Act conveyed and transferred to the seacoast states title to "lands beneath navigable waters within the **boundaries** of the respective states, and the natural resources within such lands and waters, and the right and power to manage, administer, lease, develop and use the said lands and natural resources. . . ." The term "boundaries" as used in the said Act is defined by the said Act as including "the seaward boundaries of a state or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union or as heretofore (May 22, 1953) approved by Congress . . . ," limited, however, to not more than three leagues into the Gulf of Mexico. This statutory definition should be followed, as it supersedes commonly accepted dictionary or judicial definitions (50 Am. Jur. 254, section 262; 82 C. J. S. 536, section 315).

**Florida's 1868 boundaries.**—Florida's boundaries in the Gulf of Mexico were fixed, with the approval of the Congress of the United States, three marine leagues from the coast line or land, by her 1868 State Constitution, so that her rights under the Submerged Lands Act of

May 22, 1953, are measured by that boundary, the same being her historic boundary "heretofore approved by the Congress" within the purview and intent of the said Submerged Lands Act. The conveyance and transfer of property and property rights under the said Submerged Lands Act extend three marine leagues from the coast line and not merely three geographical miles.

**Florida's boundaries at time of statehood.**—Florida's state boundaries in the Gulf of Mexico, as it existed at the time she became a member of the Union, extended "over the Territories of East and West Florida, which, by the Treaty of Amity, Settlement and Limits, between the United States and His Catholic Majesty (Spain), on the 22nd day of February A. D. 1819, were ceded to the United States" (Florida State Constitution of 1838, Appendix 18; see also Act of March 3, 1845; 5 Stat. 742). Spain appears to have claimed a national boundary for her colonies in the Gulf of Mexico of three marine leagues from the coast line. Florida's state boundaries at the time she became a member of the Union extended three marine leagues into the Gulf of Mexico from the coast line.

## SUMMARY OF FLORIDA'S ARGUMENT

**The joint or common brief.**—The defendant states have filed herein a joint or common brief

upon questions common to the said defendants which the State of Florida relies upon and adopts as her brief. In this separate brief of Florida we shall present and argue questions and points of law not applicable to all the defendants but applicable specifically to Florida.

**Purpose of the Submerged Lands Act.**—The language of the Submerged Lands Act, the entries in the Congressional Record and in Committee reports, both as to the Resolution which became the Submerged Lands Act and as to bills and resolutions upon the same subject matter submitted in the same and prior sessions of Congress, reveal a design and intention on the part of Congress to transfer and convey to the seacoast states the lands, minerals and other things in and underlying the sea, including the Gulf of Mexico, within historic boundaries, which said states had for many years prior to the decision in the California, Louisiana and Texas cases, considered as their property and administered the same as such. The Submerged Lands Act, from its own language, and from Congressional and Committee records and reports concerning it and like and similar legislation shows no intention by the Act to fix or establish state and national boundaries, but an intention to convey and transfer the lands, minerals and other things therein described from the United States to the states mentioned within their historical boundaries.

**Property and property rights conveyed by the Act.**—Section three of the Submerged Lands Act determined and declared it to be in the public interest that "title to and ownership of the lands beneath navigable waters within the boundaries (as defined in the said Act) of the respective states and natural resources within such lands and waters and the right and power to manage, administer, lease, develop and use such lands and natural resources, all in accordance with applicable state law" be vested in and assigned to the said states. The intent and purpose of the Submerged Lands Act was to transfer and convey the lands, minerals and other things in and underlying the sea within the historical boundaries of the states to them. There appears an intent to convey and transfer such property and property rights, although the same may be beyond the seaward international boundary of the United States, so long as such property is within the historical boundaries of the states as defined in the Submerged Lands Act.

**Nature and purpose of international boundary.**—The special property and property rights here considered lie in and under the waters of the sea, and such ownership does not in any way conflict with the enjoyment and the rights of navigation in the waters of the sea where such property and property rights are

located. A distinction has been drawn between the sea and its bed and the subsoil under the sea. The property and property rights here involved belong primarily to the subsoil under the sea, rather than the sea itself. The three mile international boundary, even if here applicable, relates only to the use of the high seas, including the use of the floor of the sea for the purposes of navigation, including the anchoring of boats and vessels, and does not constitute an absolute state or national boundary. It is a boundary limited for certain purposes. There may be boundaries for different functions and purposes.

**State property beyond its boundaries.**—Although a state owning land beyond its borders, as in another state, may not exercise governmental control over such lands, it does not follow that because it is not sovereign where it owns property that it may not be such an owner.

**Establishment of state historic boundaries.**—Not only are the seacoast states on the Gulf of Mexico permitted, under the Submerged Lands Act, to establish their historic boundaries as of the date they became members of the Union, but they are also permitted to establish any state boundary which prior to May 22, 1953, received Congressional approval, for the purpose of receiving the conveyance and transfer

from the United States as provided by said Act. Such an approval of a state boundary may be an implied one as well as an express and formal one. Upon the question of approval by Congress, within the purview of the Submerged Lands Act, we consider as a parallel the consent and approval by Congress of compacts between states under Clause 2, Section 3, Article IV, of the United States Constitution. This court has held in numerous cases that the approval or consent of Congress before a compact between states becomes effective may be an implied approval or consent and need not be an express one. The approval of the state constitutions under the Reconstruction Acts was no more sacred than that contemplated by said Clause 2, Section 3, Article IV, of the United States Constitution.

**Florida Constitution of 1868.** — When Congressional proceedings, committee reports, arguments of members, and other available records are taken into consideration it seems clear that the Florida Constitution of 1868 was duly approved by the Congress in 1868, within the intent and purview of the Submerged Lands Act of 1953. The Act of March 2, 1867, required that the rebel states, including Florida, frame new state constitutions and, after their approval by the people of the state, submit the same to the Congress, and further provided that

"when such constitution shall have been submitted to Congress for examination and **approval**, and Congress shall have **approved** the same," that such state be admitted to representation in the Congress. Florida submitted her Constitution of 1868 to Congress which constitution was approved by the Congress on June 25, 1868 (15 Stat. 73), and Florida was thereupon admitted to representation in Congress. The Florida Constitution of 1868, having been approved by Congress, within the intent and purview of the Submerged Lands Act, the state boundary therein set out and described was also approved by Congress.

**Boundary at time of statehood.**—The Act of Congress of March 3, 1845 (5 Stat. 742) admitting Florida as a state of the Union, described the said state as embracing "the Territories of East and West Florida, **which by the Treaty of Amity, Settlement and Limits, between the United States and Spain . . . were ceded to the United States**" (emphasis supplied). The Florida Constitution of 1838, being the constitution in force when admitted as a state of the Union, provided that the "jurisdiction of the State of Florida **shall extend over the Territories of East and West Florida, which** by the Treaty of Amity, Settlement and Limits . . . **were ceded to the United States**" on February 22, 1819 (emphasis supplied). The boundaries of the State

of Florida at the time of her admission as a state were coextensive with the territory ceded by Spain to the United States by the Treaty of Amity, Settlement and Limits of February 22, 1819. Spain claimed a seaward boundary in excess of three geographic miles in the Gulf of Mexico when she ceded the Floridas to the United States. Florida's seaward boundaries in the Gulf of Mexico at the time of statehood extended three marine leagues, or more, into the Gulf of Mexico.

## ARGUMENT

**First question.**

**IS THE UNITED STATES ENTITLED, AS AGAINST THE STATE OF FLORIDA, TO THE LANDS, MINERALS AND OTHER THINGS UNDERLYING THE GULF OF MEXICO, BETWEEN A LINE THREE GEOGRAPHIC MILES SEAWARD FROM THE ORDINARY LOW-WATER MARK AND FROM THE OUTER LIMITS OF INLAND WATERS ON THE COAST, AND A LINE THREE MARINE LEAGUES FROM SAID LOW-WATER MARK AND OUTER LIMITS OF INLAND WATERS?**

**Joint and common brief of the defendant states.**—It is demonstrated by the joint and

common brief filed herein by the defendant states that "Under the Submerged Lands Act, the defendant states are entitled to submerged lands and natural resources extending to the States' 'historic boundaries' as defined in the Act, and these property rights are not limited to the national maritime boundary," (pages 5 to 47); and that "Neither International Law nor any National Boundary fixed a maximum three mile limit in the Gulf of Mexico at the relevant times prescribed by the Submerged Lands Act," (pages 67 to 143). These points will not be re-argued and presented by this defendant, the said joint and common brief being relied upon.

— A —

**THE CONGRESS OF THE UNITED STATES, PRIOR TO THE EFFECTIVE DATE OF THE SUBMERGED LANDS ACT (MAY 22, 1953) APPROVED, WITHIN THE PURVIEW AND INTENT OF THE SAID SUBMERGED LANDS ACT, A SEAWARD BOUNDARY FOR THE STATE OF FLORIDA EXTENDING THREE OR MORE MARINE LEAGUES INTO THE GULF OF MEXICO.**

1. **A state's seaward historical boundary in the Gulf of Mexico, under the said Sub-**

**merged Lands Act, includes boundaries which have "been heretofore approved by Congress" by implication as well as by express or specific approval.**

**Florida's contention.**—Florida says that her State Constitution of 1868 was approved, within the purview and intention of the Submerged Lands Act of 1953, by Congress expressly by the Act of June 25, 1868, as well as by implication. The action of the said Congress, under and pursuant to the Acts of Congress of March 2, 1867 (14 Stat. 428) and of March 22, 1867 (15 Stat. 1), in connection with and concerning the said Florida Constitution of 1868, constituted an implied approval of the said constitution, in addition to the approval by the said Act of June 25, 1868.

**Statutory definition used.**—The Submerged Lands Act of May 22, 1953, provides that the term "boundaries" as used therein "includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, **or as heretofore approved by Congress** . . . but in no event shall the term . . . be interpreted as extending from the coast line . . . more than three marine leagues in the Gulf of Mexico." (43 U. S. C. Supp. V, 1301). The said Act further provides that nothing "is to be con-

strued as **questioning** or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such state became a member of the Union or **if it has been heretofore approved by Congress.**" (43 U. S. C. Supp. V, 1312). From the above and foregoing it is readily apparent that Congress, by the Submerged Lands Act of 1953 intended to grant to the Gulf coastal states lands within their historical boundaries; or in other words, their boundaries as they existed when the states became members of the Union (as provided by their constitutions or laws prior to or at the time such states became members of the Union) **or as approved by Congress prior to May 22, 1953.** The above phrase **"has been heretofore approved by Congress"** is an important one and material in the consideration of Florida's rights under the said Submerged Lands Act.

**Construing the phrase "heretofore approved by the Congress."**—"The primary rule of construction of statutes is to ascertain and declare the intention of the legislature, and carry such intention into effect to the fullest degree" (50 Am. Jur. 200-203, section 223; see also 82 C. J. S. 560-571, section 321). Every Act of Congress making a grant is to be treated both as a law and a grant, and the **intent of Congress,** when

ascertained, is to control the interpretation of the law. The solution of these questions depends, of course, upon the construction given the act making the grants; and they are to receive such a construction as will carry out the **intent** of Congress . . . ." (Wisconsin Central Railroad Company v. Forsythe, 159 U. S. 46, text 55, 15 S. Ct. 1020, 40 L. ed. 71, text 74; see also Missouri, Kansas and Texas Railway Company v. Kansas Pacific Railway Company, 97 U. S. 491, text 497, 24 L. ed. 1095, text 1097). "The purpose of Congress is a dominant factor in determining the meaning" of an Act of the Congress (United States v. Congress of Industrial Organizations, 335 U. S. 106, text 110, 68 S. Ct. 1349, 92 L. ed. 1849, text 1856; see also Vermilya-Brown Company v. Connell, 335 U. S. 377, text 386; 69 S. Ct. 140, 93 L. ed. 78, text 85; Helvering v. Stockholms Enskilda Bank, 293 U. S. 84, text 94, 55 S. Ct. 50, 79 L. ed. 211, text 218). "Courts should construe laws in harmony with the **legislative intent** and seek to carry out the **legislative purpose** (Foster v. United States, 303 U. S. 118, text 120, 58 S. Ct. 424, 82 L. ed. 700, text 701).

**Resort to legislative journals, records, reports, etc.**—"In determining the proper construction of a statute, the decisions are substantially agreed that committee reports may be considered where the language of the statute

is ambiguous, and doubt as to its proper meaning exists. This rule has been applied to a supplemental report of a committee in charge of a bill, and even to a committee statement made after the enactment of the bill, as well as to conference reports" (50 Am. Jur. 325 and 326, section 334) and, "as a rule, it has been considered permissible, in the construction of a statute of doubtful meaning, to resort to statements by the members of the legislature, generally a committee member or chairman, having the bill in charge, the courts apparently regarding explanatory statements by such persons as being in the same category as committee reports, or as in the nature of supplemental reports (50 Am. Jur. 327, section 335). This court referred to reports of Senate and House Committees in the Congress, for purposes of construction of federal statutes and laws, in McLean v. United States, 226 U. S. 374, 33 S. Ct. 122, 57 L. ed. 260, text 263; Northern Pacific Railway Company v. State of Washington, 222 U. S. 370, text 380, 32 S. Ct. 160, 56 L. ed. 237, text 240; and Oceanic Steam Navigation Company v. Stranahan, 214 U. S. 320, text 333, 29 S. Ct. 671, 53 L. ed. 1013, text 1019. This court, in Harrison v. Northern Trust Company, 317 U. S. 476, text 479, 63 S. Ct. 361, 87 L. ed. 407, text 410, stated that "words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter

how 'clear the words may appear on "superficial examination" '."

In United States v. American Trucking Association, 310 U. S. 534, text 542-544, 60 S. Ct. 1059, 84 L. ed. 1345, text 1350 and 1351, this Court said that "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. . . . . Frequently, however, even when the meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislature, has said. Obviously, there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from

its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. . . ."

**Congressional and Committee Reports.** — House Report No. 215, accompanying H. R. 4198 of the 83rd Congress (now the Submerged Lands Act), and prior reports relating to like legislation in prior Sessions of the Congress, attached to said report as an appendix, as reflected by Legislative History Commentaries of the 83rd Congress, First Session, published by **West Publishing Company and Edward Thompson Company,** (page references are to this publication) states that (page 1387) Title II of the said Act "deals with the rights and claims by the states to the lands and resources beneath navigable waters **within their historic boundaries** and provides for their development by the states." Page 1388, under the heading of "Definitions," states that the term "boundaries" "includes the **historic seaward boundaries of the States** in the Atlantic Ocean, the Gulf of Mexico, or any of the Great Lakes, as they were upon entrance of the State into the Union or as has been or shall **be approved by Congress.** . . ." Page 1390, under the heading of "Title II, Lands Beneath Navigable Waters Within State Boundaries," after stating the general purpose of the said title, further states that it

does not "prejudice the existence of any State's historic seaward boundary into the . . . Gulf of Mexico . . . . beyond these three miles **if it was so provided by any treaty of the United States, or any act of Congress, or the constitution or laws of a state prior to or when it entered the Union or has been or shall be approved by Congress. . . .**" Said House Report No. 215, in its "Preliminary Statement," states that "there is incorporated in this report, as an appendix, House Report No. 695 of the 82nd Congress, 1st Session. Said report contains a reprint of House Report No. 1778 of the 80th Congress, 2nd Session" (page 1385).

The following other extracts are taken from said House Report No. 695, to wit:

> (page 1399) "Title II merely fixes the law of the land that which, throughout our history **prior to the Supreme Court decision in the California case in 1947, was generally believed to be the law of the land. . . .** Therefore, title II recognizes, confirms, vests, and establishes in the States the title to the submerged lands, **which they have long claimed,** over which they have exercised all the rights and attributes of ownership.
>
> "The areas affected by title II include . . . and submerged lands seaward from the

coast line for a distance of 3 miles or **to the original boundary line of any State in any case where such boundary at the time the State entered the Union extended more than 3 miles seaward.**"

The following extracts are taken from said House Report No. 1778, to wit:

(Page 1417) "The purpose of H. R. 5992, like that of House Joint Resolution 225, which passed the Seventy-ninth Congress by a substantial majority but was vetoed by President Truman, is to confirm and establish the rights and claims of the 48 states, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters **within their boundaries**; subject, however, to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters."

(page 1427). ". . . **In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement.** . . ."

**Senate Joint Resolution No. 13,** of the 83rd Congress, First Session, was substantially identical, if not identical, with House Resolution No. 4198, (now the Submerged Lands Act) of the same session. This being true, Senate Report No. 133, which accompanied said Senate Resolution No. 13, is of material value in construing the intent and purpose of the Congress in the adoption and enactment of the said Submerged Lands Act. Said Senate Report No. 133, in its explanation of the said resolution, states (page 1483) that said resolution, among other things,

> "provides that the right of ownership of lands and natural resources beneath navigable waters **within the historic boundaries of the respective states** are vested and assigned to the States. . . ."

This same report (page 1484) also states that section four of the said resolution recites,

> "it is also provided that this section is without prejudice to the existence of a State's boundary beyond the 3 mile limit, if it was so provided prior to or at the time such State entered the Union, **or if it has been heretofore or hereafter approved by Congress.**"

Said Senate Report No. 133 has attached thereto as Appendix "E" a copy of Senate Report No.

1592, which accompanied Senate Bill 1988, 80th Congress, 2nd Session, wherein it was stated, under the heading, "Recognizance of State Ownership by Congress," that:

> "**In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending three marine leagues seaward and a like distance into the Gulf of Mexico.** Texas' boundary was fixed 3 leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by annexation agreement. . . ." (page 1516, West Publishing Company, et al., publication).

Reference is made to a like statement in House Report No. 1778 above mentioned.

**Arguments and testimony before Congress.**

—Senate Joint Resolution No. 13, of the 83rd Congress, First Session, if not a companion bill to House Resolution No. 4198, of the same Congress and Session (now the Submerged Lands Act), was a substantial identical copy thereof, so that any discussions or testimony at committee hearings on said Resolution No. 13, are here material in construing the said Submerged Lands Act. At hearings held by the Committee on Interior and Insular Affairs of the United

States Senate on February 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, and March 2, 3 and 4, 1953, the following transactions occurred (page references are to the official committee report as printed for the use of the committee):

1. (page 34). SENATOR HOLLAND, of Florida ". . . I want to make it very clear that my bill does not apply to that entire area shown in blue upon the map, but it applies instead to only 3 miles in area lying off all States but two, and in the case of Texas applies to 3 leagues, or nearly 10 1/2 miles, and in the case of Florida has two different applications, 3 miles all down our Atlantic coastline and around the Straits of Florida and back to the mainland, **and 3 leagues or nearly 10 1/2 miles** for the rest of Florida.

"By way of explanation at this time, the reason there is this difference in the case of the coastline of Texas and a portion of the coastline of Florida is that the constitutions of those two States appear 3 leagues out, as I have stated in my statement; that is, over the entire coastline of Texas and over a portion, something more than a third of the coastline of Florida."

* * * * *

"The questions presented by Senate Joint Resolution 13 have been fully considered by Congress several times, and I believe that this legislation, which relates solely to property within the States' boundaries, can be speedily passed if left unencumbered by other problems. It will be noted that this bill relates to offshore lands beyond the 3-mile limit in only two cases, the west coast of Florida and the coast of Texas, . . . **which States have, under their constitutions, boundaries extending 3 leagues into the Gulf of Mexico. . .**"

2. (Page 48). SENATOR HOLLAND.

". . . But the language of the bill is perfectly clear that it is the constitutional boundaries, and it is the historic boundaries, and it is a case of restoration and establishment to States of what lie within their boundaries of jurisdiction, of criminal law and of various other kinds of law, boundaries which fix the venues of cases which arise. We want to go back to the fundamental theory that the States have rights in the assets found in their own areas in these submerged lands."

3. (page 50) SENATOR HOLLAND.

". . . I would like the record to show that

there is 3.45 land miles, which would apply in every place to all States except as to the 2 States, 1 of which, Texas, has a 3-league limitation in its own constitution, extending all across that State's front on the Gulf; **and the State of Florida, which has a 3-league limitation extending over a portion, something more than a third of its frontage, being frontage on the Gulf of Mexico."**

4. (page 57) SENATOR HOLLAND.

"The Constitution of the State of Florida, adopted February 25, 1868, approved by Congress April 14, 1868, and ratified by the people of Florida May 4-6, 1868, **fixing the State boundaries on the west coast in the Gulf of Mexico at three leagues from the land,** presents still another variation. The constitutions of the Original Thirteen States present still further and varied problems in this regard."

5. (page 72) SENATOR HOLLAND.

"In this instance I simply call attention to the fact that we are dealing, under my bill at least, with a narrow, strangling cord of land and water, generally 3 miles wide, never more than 10½ miles wide, 5,000 miles long, extending from the upper border of Maine clear down the Atlantic coast,

back through the gulf, and then up the Pacific, which must become either a part of the States upon which it bounds and the coastal communities which it must serve."

6. (Pages 212, et seq.) Texas Special Title. Note discussion between Senator Daniel (of Texas) and Senator Anderson (of New Mexico) concerning Texas' claim to a three league seaward boundary.

7. (Page 411) SENATOR DANIEL, of Texas.

"I may say the Republic of Mexico is claiming the same distance out into the Gulf as the State of Texas **and the State of Florida, with approval by the United States Congress.**

"The matter of 9 miles or 10½ miles all depends upon whether you are talking about geographic miles or statutory miles, I believe it is. Anyway, we are claiming the same distance; actually 3 leagues is equal to 10½ statutory miles."

8. (Page 931) While Attorney General Brownell was before the Committee for the purpose of making a statement and testifying (pages 925, et seq.), the following exchange occurred between Senator Anderson and the Attorney General:

**Senator Anderson** . . . "The Secretary of the Interior said: 'I think the Attorney General's idea would probably be more accurate than the Secretary of the Interior . . .' Since he has qualified you as a witness he would like to have you testify on this, can you give us any idea whether you would follow, for example, the Boggs formula?"

**Attorney General Brownell**: "Our thoughts generally, Senator, without going into great detail, is that this line would be **three miles out, except in the cases of Texas and the West Coast of Florida.**"

At a hearing before Subcommittee No. 1, Committee on the Judiciary, House of Representatives, on House Resolution 2948, and Similar Bills (all similar and substantially identical with the present Submerged Lands Act), on February 17 and 26 and March 3, 4 and 5, 1953 (Serial No. 1, printed for the use of the Committee on the Judiciary), the following transactions took place:

1. (page 181) Statement and testimony of HON. DOUGLAS McKAY, Secretary of the Interior.

   "**Mr. Graham**: Mr. Celler, have you any questions?

**Mr. Celler:** Yes; I have a few questions.

Mr. Secretary, I believe your statement, if I may be privileged to sum it up, says that the **right of disposal lies in the Federal Government concerning the lands submerged under the sea** seaward from the limitations of the State boundaries; is that correct?

**Secretary McKay: Yes, sir, of the historic boundaries.** In most cases of these States, it is three miles to sea, **except in Texas and Florida, where it is, of course, 3 leagues."**

2. (Pages 188 and 189) **Mr. Wilson.**

"I was speaking, particularly with regard to outside the State boundaries of 10½ miles of Texas and Florida, and 3 miles for the rest of the States. **Historical boundaries** are what we are talking about. I say outside the **historical boundaries.**

**Mr. Celler:** "Would it not be more consistent with what you just said that instead of using the term **'historical boundaries,'** you would use the boundaries as claimed by the States?

**Secretary McKay**: "No. I cannot agree with that. The **historical boundaries** have been established for 100 years or more, from the time the State came into the Nation.

**Mr. Celler**: "Then you are limiting the claim of the States to **historic boundaries** that have existed over the years?

**Secretary McKay**: "I have not made any statement on the claims of the States.

**Mr. Celler**: "What do you mean by **historic boundaries?** This is what I am trying to get at.

**Secretary McKay**: "The **historic boundaries** have been recognized by the States, in the case of my State for 94 years, when we came into the Union with the description that we came in with. With Texas, they came in by a treaty as a Republic. Those are **historic boundaries.** I do not think there is any question about that."

**Meaning and purpose of "boundaries" as used in the Submerged Lands Act.**—Congress, by section three of the Submerged Lands Act (section 1311, title 43, United States Code; 67 Stat. 30), "determined and declared (it) to be in the public interest that (1) title to and owner-

ship of the lands beneath navigable waters within the **boundaries** of the respective States, and the natural resources within such lands and waters and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established and vested in and assigned to the respective states . . ." The term "boundaries," as used in the Submerged Lands Act, is defined by Congress (section two of the said Act; section 1301, title 43, United States Code; 67 Stat. 29), as including "the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as heretofore approved by the Congress . . ."

Although section four of the said Submerged Lands Act (section 1312, title 43, United States Code; 67 Stat. 31) approves the seaward boundary of each original state as a line three geographical miles seaward of the coast line, the said section further provides that nothing therein "is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles, . . . **if it has been heretofore approved by Congress.**" The Submerged Lands Act uses the term "boundaries" in the sense expressed in the above mentioned Congressional definition of the

term, and not generally. The reference is not to the international boundary but to a "historical" boundary as described in the State Constitution or laws at or prior to the time such State became a member of the Union or **as it may have been subsequently approved by Congress.** All the evidence relative to the meaning of the Submerged Lands Act, all of the contemporaneous utterances concerning its objectives clearly and convincingly beyond cavil point to an unmistakable target in so far as Florida is concerned, viz, Congressional approval in 1868 of its three marine league seaward boundary in the Gulf of Mexico.

We submit that in approving Florida's 1868 Constitution containing the three marine league boundary in the Gulf of Mexico, Congress expressly and directly approved such boundary in every real sense—and even technically it approved this boundary. To deny it by asserting that it must have been approved as a separate item is to split hairs. In the law of contracts, in common every day understanding, when a document has been approved by a contracting party it is approved in toto and not in part. We believe the Government's case is built upon more than one very tenuous foundation and its claim that the Congress did not approve Florida's Constitutional boundary in its 1868 Constitution is one of them.

**Not only did the Congress in 1868 approve Florida's Constitution containing said three marine league boundary without question or reservation then, but in the ninety years ensuing Congress has never questioned it and expressly recites it does not question its existence in the Submerged Lands Act.**

**Construction of term "heretofore approved by the Congress."**—While we contend that in approving Florida's 1868 Constitution, Congress expressly approved the boundary provisions therein fixing a three marine league line in the Gulf of Mexico, there are also many authorities indicating that such approval may be implied. Although the United States Constitution requires that compacts between states have the consent of Congress before they are effective, it has been held that **such consent may be implied from circumstances** (Clause 3, Section 10, Article I, United States Constitution; Wharton v. Wise, 153 U. S. 155, text 172 and 173, 14 S. Ct. 783, 38 L. ed. 669, text 676; Virginia v. Tennessee, 148 U. S. 503, text 521 and 522, 13 S. Ct. 728, 37 L. ed. 537, text 543 and 544; Virginia v. West Virginia, 78 U. S. 39, text 59-61, 20 L. ed. 67, text 72 and 73; Green v. Biddle, 21 U. S. 1, text 85-87, 5 L. ed. 547, text 568 and 569). In Virginia v. Tennessee, supra, the court remarked that "Story says that the consent may be implied, **and is always to be implied when Con-**

gress adopts the particular act by sanctioning its objects and aiding in enforcing them." The provision in the Submerged Lands Act for the establishment of a State's seaward boundaries beyond three geographical miles, but within three leagues, where such a boundary was "heretofore approved by Congress," does not seem to be any more specific than the provision in Clause 3, Section 10, Article I, of the United States Constitution, that "no state shall, **without the consent of Congress,** . . . enter into any Agreement or Compact with another State . . . ." If the consent or approval of Congress may, under said Clause 3, Section 10, Article I, of the United States Constitution, be an implied one, then why should **the approval by Congress,** mentioned in the Submerged Lands Act, be an express approval only and not an implied one. The requirements of the statute do not seem to be any more specific than that of the said constitutional provision. These observations lead to the conclusion that the statutory requirement that the boundary claimed by a state beyond the three mile limit be one that "has been heretofore approved by Congress," may be **an implied approval** determined from existing facts and circumstances. Consent to a compact between states may be implied and is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing it (Virginia v. Tennessee, 148 U.S. 503, text

521 and 522, 13 S. Ct. 728, 37 L. ed. 537, text 543 and 544). In Wharton v. Wise, 153 U. S. 155, text 172 and 173, 14 S. Ct. 783, 38 L. ed. 669, text 676, Congress approved an award made by arbitrators pursuant to agreement for an arbitration between two states; this approval was held sufficient as an approval of the compact to make it valid. The States of Florida and Georgia, in 1859, enacted like laws providing for a survey of the boundary between the two states; however, no formal approval of the compact or agreement between the states by Congress was made; however, in 1872, Congress passed an act to quiet title to lands in which the said boundary line was recognized, and this action on the part of the Congress was held, by the Supreme Court of Florida, in Groover v. Coffee, 19 Fla. 61, text 76 and 77, to have been an implied approval of the compact between the states for the location of the boundary between them. If a matter as formal as a compact between states may receive an implied approval or consent on the part of the Congress, then it would seem to follow that the "approval of Congress" contemplated by the Submerged Lands Act may likewise be by implied approval.

**State ownership of property beyond its boundaries.**—The government, on pages 13, et seq., of its Brief, seems to assume the position that a state may not take title to and own and possess

property and property rights beyond the so-called international boundary; that the Congress was without authority to grant submerged lands, minerals and other things not located within international boundaries to the states. The authorities bear out the right of a state to own, possess, and operate property and property rights beyond its boundaries (81 C. J. S. 1077, section 104). In Mettet v. City of Yankton, 71 S. D. 435, 25 N. W. 2d 460, text 466, it is stated that the State of South Dakota "has the power to hold property, real or personal, in the State of Nebraska," citing with approval the cases of McLaughlin v. City of Chattanooga, 180 Tenn. 638, 177 S. W. 2d 823, and Dodge v. Briggs, C. C., 27 Fed. 160. In Lester v. Jackson, 69 Miss. 887, text 890, 11 So. 114, text 115, the Court stated that "one state may own land in another, but it can exercise no governmental control over it . . . but it does not follow that because it may not be sovereign it may not be owner." This quotation from the Mississippi case was quoted with approval in McLaughlin v. Chattanooga, supra. This Court, in Georgia v. Chattanooga, 264 U. S. 472, 44 S. Ct. 369, 68 L. ed. 796, recognized the right of the State of Georgia to purchase, own and use property in the State of Tennessee for railroad purposes. The power and right of one state to own and use property in another state was recognized in Wayne County Court v. Louisa & Fort Gay Bridge Company,

DC W. Va. 46 Fed. Supp. 1, text 2; Burbank v. Fay, 65 N. Y. 57, text 62; Florida State Hospital v. Durhan Iron Company, 194 Ga. 350, 21 S. E. 2d 216, text 219; State v. City of Hudson, 23f Minn. 127, 42 N. W. 2d 546, text 548; and State v. Bentley, 216 Minn. 146, 12 N. W. 2d 347, text 357.

The Congress of the United States, under Clause 2, Section 3, Article IV, of the United States Constitution, is given "power to dispose of . . . the territory or other property belonging to the United States . . . ." This constitutional power is not limited as to location of the property to be disposed of. The United States, through Congress, was empowered by the above constitutional provision to transfer the property and property rights described in the Submerged Lands Act to the states named without regard to location with relation to present state boundaries, if otherwise than their historical boundaries.

**Conclusion.**—Not only are the states permitted to establish their boundaries as of the date they became a member of the Union, for the purpose of receiving the conveyance and transfer of the properties and property rights mentioned in the Submerged Lands Act, but they are also permitted to establish, for the same purpose, any other boundary, or even the same

boundary, **that was, prior to May 22, 1953** (the effective date of the Act), **approved by the Congress.** There seems little difference legally between the requirement of approval by Congress, under the terms of the Submerged Lands Act, and the consent or approval by Congress to compacts between states, under Clause 3, Section 10, Article I, of the United States Constitution. This Court has held in numerous cases that the approval or consent required of Congress before a compact between states becomes effective may be an implied approval or consent and need not be an express one. We, therefore, submit that express or specific approval by the Congress is not required but an approval by Congress may be an implied one from all circumstances. That such an approval of a state's boundaries is effective and the conveyance of the property and property rights valid even if beyond present state boundaries.

**2. The Congress of the United States, prior to May 22, 1953, approved the boundaries of the State of Florida as described in Article I, of the Florida Constitution of 1868.**

**Boundaries in 1868 Florida Constitution.**— Article I, of the Florida Constitution of 1868, in so far as here material, described the boundaries of the State of Florida as "commencing

at the mouth of the river Perdido; from thence . . . down the middle of said (St. Mary's) river to the Atlantic ocean; hence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs **to and including the Tortugas islands;** thence northwestwardly **to a point three leagues** from the mainland; thence northwestwardly **three leagues** from land, to a point west of the mouth of the Perdido river; thence to the place of beginning."

**The Submerged Lands Act,** in sections two and four thereof recognizes historical state boundaries in the Gulf of Mexico which were **"heretofore approved by Congress,"** that is, approved prior to May 22, 1953. It is expressly provided in said act that nothing in section four thereof "is to be construed as **questioning** or in any way prejudicing the existence of any State's eastward boundary beyond three geographical miles . . . **if it has been heretofore approved by Congress.** The quantity of the property and property rights conveyed and transferred to the Gulf coastal states, by the Submerged Lands Act, is measured by the boundaries described in the said act; that is, the boundaries as provided in their constitutions or laws when the state became a member of the Union, **or the boundaries as approved by Congress some time prior to the effective date of the Submerged**

**Lands Act, that is, May 22, 1953.** We have hereinabove demonstrated that the phrase "as heretofore approved by Congress," has been satisfied by an express approval by Congress as well as by an implied approval. Such an approval may be implied from circumstances and incidental acts and proceedings by Congress.

**Congressional intent controlling.**—We have hereinabove demonstrated that the intention of Congress, when it enacts a statute or law, is the guiding star from which the meaning and intent of the statute or law is to be determined; and that in determining congressional intent resort may be had to the Congressional Record, committee and other reports, argument of members of Congress, and other public records. Congress, instead of delineating the specific boundaries within which the properties and property rights conveyed and transferred are located, has used the historic boundaries of the states as the measure of transfer.

**Reconstruction Acts.**—The act of March 2, 1867 (14 Stat. 428) provided that "when the people of any one of said rebel states shall have formed a constitution of government in conformity with the constitution of the United States" and have done and performed certain mentioned other things, "and when such constitutions shall have been ratified by a majority

of the persons voting on the question of ratification, and **when such constitution shall have been submitted to Congress for examination and approval and Congress shall have approved the same,"** and when the said states have met certain other requirements, "said state shall be declared entitled to representation in Congress and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law. . . ." This act was supplemented by the Act of Congress of March 22, 1867 (15 Stat. 1) as to qualification and registration of electors, and specifically provided that "if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the state, and if the said constitution shall be declared by the Congress to be in conformity with the provisions of the act to which this is supplementary . . . **and the said constitution shall be approved by Congress,** the state shall be declared entitled to representation . . . ." Both of these acts clearly contemplated the examination and **approval** of the constitutions by Congress before the rebel states would be entitled to further representation in the Congress, which approval may be an implied one.

**Florida's constitutional convention of 1868.**— Following the above reconstruction acts and pursuant to and in compliance therewith Flor-

ida caused a constitutional convention to be assembled on January 20, 1868, at which convention a state constitution was drafted, approved and submitted to the people for adoption or rejection, all as required by the reconstruction acts and in compliance therewith (appendix 11-23). The constitution so proposed and submitted was adopted by the people of Florida, after which it was, in accordance with the reconstruction acts, submitted to Congress (appendix 15-23), and by it received, ordered printed and was printed as a part of House Miscellaneous Document No. 297, of the 2nd Session of the 40th Congress (see also House Miscellaneous Document No. 114 of the same Congress and Session).

**Florida's Constitution of 1868 submitted to Congress and approved.**—After the Florida Constitution of 1868 was submitted to Congress and received by it, it underwent exhaustive and complete consideration and discussion in the Congress (Congressional Globe of the 40th Congress, second Session, pages 2073, et seq.). Under section five of the Act of Congress of March 22, 1867 (15 Stat. 1) where a state constitution was submitted to Congress and "the Congress shall be satisfied that such constitution meets the approval of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions

of the act to which this is supplementary (act of March 2, 1867) . . . **and the said constitution shall be approved by Congress,** the State shall be declared entitled to representation." Congress by its preamble to the Act of June 25, 1868 (15 Stat. 73), determined that the State of Florida, together with other named states, had "framed constitutions of State Government which are republican . . . ." and were entitled to representation in Congress as soon as they met certain other requirements of the said statutes.

**The said Act of Congress of June 25, 1868** (15 Stat. 73), in its preamble recites that,

> "Whereas, the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama and **Florida** have, in pursuance of the provisions of an act entitled 'An Act for the more efficient government of the rebel states,' passed March 2, 1867, and the acts supplementary thereto, **framed constitutions of state government which are republican,** and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same . . . ."

and then enacted,

"That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida, **shall be entitled and admitted to representation in Congress as a State of the Union** when the legislature of such State shall have ratified the amendments to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen . . . " (emphasis supplied).

One of the requirements of the reconstruction acts was that the state constitutions adopted should be sent to Congress for its **approval.** The act of March 2, 1867, provided that before the rebel states would be entitled to representation in Congress that their state constitutions should be "submitted to Congress for examination and approval." The act of March 2, 1867, and likewise the act of March 22, 1867, provided that when **Congress shall approve** the state constitutions that they shall be admitted to representation in Congress. Records reveal that the delegation from Florida to the Congress was sworn in and seated on June 30 and July 1, 1868. Congress thus enforced the condition of the acts of March 2 and 22, 1867, and the constitutions of the states received **Congressional approval** before their delegations were admitted to seats in Congress.

The Congressional proceedings (Congressional Globe for 1868, pages 3090-3097) show that the Florida Constitution of 1868 came in for detailed consideration by Congress and was discussed both pro and con (appendix 56-76). After due consideration and extensive discussion of the Florida constitution of 1868 by Congress, as well as the constitutions of other states, the Act of Congress of June 25, 1868, supra, was adopted (15 Stat. 73).

**Evidence that the Florida Constitution of 1868 was approved by Congress.**—In addition to the above mentioned items of evidence, taken from the Congressional Globe, the following other extracts from the Congressional Globe for the legislative years of 1867 and 1868 seem to further confirm the view that Congress **approved** the Florida Constitution of 1868. Under the reconstruction acts **approval by Congress** of State Constitutions was a condition to representation in Congress; Florida was admitted to representation in Congress in 1868.

1. **The Veto Message.**—The Act of Congress of March 2, 1867 (14 Stat. 428) was passed over the veto of the President. One of the objections to the bill, by the President in his veto message, was that "another Congress must first **approve the constitutions** made in conformity with the will of this

Congress, and must declare these states entitled to representation in both houses . . . ." (Congressional Globe of March 2, 1867, page 1971; appendix 46).

2. **Mr. Pruyn,** on May 14, 1868, addressing himself to the reconstruction acts and the state constitutions adopted and submitted to Congress thereunder remarked, "But, sir, the views were boldly carried out and we have the result now before us as far as it has been reached in this direction in the shape of these constitutions **now presented for our approval.** (May 14, 1868, Congressional Globe, 261; appendix 48).

3. **Mr. Woodbridge,** on May 14, 1868, remarked that the state constitutions adopted under the reconstruction acts, in compliance with such acts, "should be approved by Congress and the state admitted to representation." And on the same day further remarked that "those constitutions have been printed and laid before us. We have looked at them; **we have pronounced them republican in form;** and all we propose to require is that they remain so forever." (May 14, 1868, Congressional Globe, 2463 and 2465; appendix 48 and 49).

4. **On June 12, 1868, the Florida Consti-**

**tution of 1868** came in for extensive consideration and argument, showing clearly that the said constitution received considerable study and was extensively discussed by the Congress before the enactment of the act of June 25, 1868 (15 Stat. 74), (June 12, 1868, Congressional Globe, 3090-3097; appendix 56 to 75).

5. **Mr. Trumbull,** on June 30, 1868, remarked that "we have settled by an act which we passed a few days ago the condition of Florida. We have declared that that state, **under a constitution which was submitted to us and examined, was entitled to representation in Congress when she ratified the constitutional amendment known as article fourteen. That act has passed both houses and is now the law of the land."** (June 30, 1868, Congressional Globe, 3601; appendix 76). He further remarked, on the same day, that Florida and certain other states had ratified constitutions **in accordance with the reconstruction acts** (June 30, 1868, Congressional Globe, 3602; appendix 76).

6. **The Attorney General of the United States** (Hon. E. R. Hoar) on October 5, 1869, advised the President of the United States, concerning an application to cause an arti-

cle in a state constitution concerning apportionment of representation (in another state) to be submitted and voted on separately from the remainder of the said constitution, that, "the provision for the apportionment of representation is an essential part of any constitution. If that part were submitted separately and rejected, there would be no frame of government adopted for the state, the rest of the constitution not being sufficient to constitute a frame of government." (XIII Opinions Attorney General 156).

The omission of a state's boundaries from a state constitution would likewise be the omission of an essential part of a state constitution. A state constitution without a description of the boundaries of the state would likewise be insufficient as a frame of state government. Doubtless the reconstruction acts contemplated that the state constitutions to be framed be complete and not incomplete constitutions; and that they should be examined and approved by Congress as complete frames for state government.

7. **The Attorney General of the United States** (Hon. E. R. Hoar) on August 28, 1869, advised the Secretary of War, in part

as follows:

"I am of the opinion, therefore, that it may come together, organize, and act upon that amendment; but that, **until Congress shall have approved the constitution** and the action under it, and shall have restored the State form of government as republican, and admitting it to representation, the legislature is not entitled and could not, without violation of law, be allowed to transact any business, pass any act . . . ." (XIII Opinions Attorney General 135).

8. **Louis V. Caziarc, Acting Adjutant General, of the First Military District,** on June 4, 1869, advised W. C. Rice, Burgess Store, Virginia, that the state constitution of Virginia did not become the organic law of the state "until after it had been ratified by the people of the state and **approved by the Congress of the United States.**" (Executive Document No. 13, pages 94 and 95, 2nd Session, 40th Congress).

9. **Major General George C. Meade,** in his report to General Grant, under date of October 31, 1868, said, concerning the Florida constitutional convention and Constitution of 1868, in part that,

"The compromise proposition having been accepted, the two parts of the convention assembled, reorganized and proceeded to frame a constitution, which was subsequently ratified by the people and **adopted by Congress.**" (Executive Document No. 13, 2nd Session, 41st Congress, page 25).

10. **Hon. Ed. R. S. Canby, Brevet Major General Headquarters First Military District,** on July 10, 1869, advised the Adjutant General, Washington, D. C., in part, that:

"The laws of June 25, 1868, **approving the constitution of several States** and authorizing certain action under them," had certain effects. General Canby further advised that it was clearly the intention of Congress that the requirements of the reconstruction laws **"should be enforced until the constitution had been examined and approved by that body,"** that is, Congress. He then finds that certain military orders or decisions "were made subsequent to the passage of the law **of June 25, 1868, and applied to the constitutions which had already been approved by Congress . . . .**" Reference is also made to test oaths **"after the approval by Congress of the proposed constitution."** Reference is also made to a post-

ponement of the meeting of the legislature of South Carolina "until after the **Congress shall have approved the constitution under which it** (the legislature) **was elected** . . . . (Executive Document No. 13, 2nd Session, 41st Congress, pages 18 and 19; appendix 79-81).

There seems to run through this entire letter **the idea of an approval** by Congress of all state constitutions formed, submitted and adopted pursuant to and under the requirements of the reconstruction statutes and laws.

11. **General Canby,** on June 26, 1869, advised Mr. B. M. Gillis, Richmond, Virginia, in part, also as follows:

"That state officers should be required to take the oath prescribed by the Act of Congress of July 2, 1862, **unless the constitution should first be approved by Congress,"** meaning constitutions submitted and adopted under and pursuant to the reconstruction laws. He then further states that "I have heretofore held and do now hold that **the approval by Congress of any proposed constitution makes it a part of the reconstruction laws** . . . ." He further also states that **"the law of June 25, 1868,** ap-

**proving the constitutions of several states,** and authorizing specific action under them, was regarded by me as dispensing with the oath of office prescribed by the law of July 2, 1862 . . . ." Also, that "the qualification of the officers rests upon the same basis, and must be governed by the reconstruction laws until the constitution becomes the controlling law, and this does not obtain **until it has been approved by Congress** . . . ." (Executive Document No. 13, 2nd Session, 41st Congress, 20-22; appendix 83-85).

12. **The Circuit Court of Appeals, Fifth Circuit** (before Sibley, Hutcheson and Holmes), in Cunningham, Sheriff, v. Skiriotes (1939), 101 Fed. 2d 635, relative to the boundary of Florida in the Gulf of Mexico, stated that:

". . . It first appeared in the Constitution of 1868, **which was approved by Congress in readmitting Florida to the United States, and was repeated in the present Constitution of 1885.** So far as we are advised, the State of Florida has claimed without objection from any source jurisdiction over the western littoral waters accordingly for seventy years, and has exercised it under the statute here in question for the past twenty years . . . ."

13. **The District Court of the Northern District of Florida** (three judge court composed of Bryan, Circuit Judge, and Akérman and Long, District Judges) in Pope v. Blanton, 10 Fed. Supp. 18, after assuming (but not deciding) that Florida's boundary under the treaty with Spain and under her statehood act and prior to the adoption of the 1868 State Constitution was three geographic miles or one marine league, stated that "there is no rule of law to prevent the state, with the approval of Congress, from fixing the boundaries. It may be that it is usual to do this at the time of admission into the Union, but that does not signify that it cannot be done at any other time by agreement between the State and Congress, so long as the change does not affect the territory of another state . . . . In this particular case, however, while Florida was not admitted to the Union after the conflict between the states, **it was required by Congress to adopt a new constitution . . . , in which constitution one of the boundaries was changed from one league from the mainland to three leagues in the Gulf of Mexico . . . . The Congress accepted this Constitution of 1868 by the passage of Act of June 25, 1868, reciting that the state had adopted a Constitution in accordance with the Act of March**

**2, 1867 .... The consent of Congress need not be expressed, and this may appear subsequently as well as at the time .... The Constitution of 1885 is identical in description of the boundary of the State as set out in the Constitution of 1868, which Constitution was approved by Congress."** (emphasis supplied).

14. **Mr. Trumbull,** on June 8, 1868, stated in part that "the other states ... and Florida have all adopted constitutions in accordance with the reconstruction acts and have sent their constitutions here; they have ratified these constitutions by a vote of the people in accordance with the reconstruction acts." (appendix 54).

15.* **Senator Holland,** in his statement before Congress and its Committees, made the following material comments in this connection:

"I want to make it very clear that my bill ... applies ... **to only three miles in area lying off all States but two, and in the case**

*Items numbered 15 to 20 hereof reflect the contemporaneous thinking of interested persons appearing before committees considering the Submerged Lands Act or similar acts upon the question of the approval of the Florida Constitution of 1868 by Congress.

**of Texas applies to three leagues or nearly 10½ miles, and in the case of Florida has two different applications, three miles all down our Atlantic coastline and around the Straits of Florida and back to the mainland, and three leagues or nearly 10½ miles for the rest of Florida.**

"By way of explanation at this time, the reason there is this difference . . . is that **the constitutions of those two states** include provisions that the limits of those two states appear three leagues out . . . that is, over the entire coastline of Texas and over a portion, something more than a third of the coastline of Florida. . . ." (appendix 32 and 33).

". . . I would like the record to show that that is 3.45 miles, which would apply in every place to all States **except as to the two States, one of which, Texas, has a three league limitation in its own constitution, extending all across the State's front on the Gulf; and the State of Florida, which has a three-league limitation extending over a portion, something more than a third of its frontage, being frontage on the Gulf of Mexico.** . . . (appendix 35).

". . . But the language of the bill is per-

fectly clear in that it is the constitutional boundaries, **and it is the historic boundaries** and it is a case of restoration and establishment to States of what lie within their boundaries of jurisdiction, of criminal laws and of various other kinds of laws, boundaries which fix the venue of cases which arise. . . ." (page 48, record of hearing of February 16, 1953 before the Committee on Interior and Insular Affairs, United States Senate).

**"The Constitution of the State of Florida, adopted February 25, 1868, approved by Congress April 14, 1868,** and ratified by the people of Florida May 4-6, 1868, fixing the state boundaries on the west coast in the Gulf of Mexico at three leagues from the land, presents still another variation. The constitutions of the original thirteen States present still further and varied problems in this regard. . . ." (page 57, record of committee hearing, supra).

16. **Senator Price Daniel,** in his statement before Congress and its Committees, made the following material comments in this connection:

". . . the International Boundary Commission between the United States and

Mexico actually ran our international boundary between the two nations three leagues out into the Gulf of Mexico, in accordance with the Treaty of Guadalupe Hidalgo.

"I may say the Republic of Mexico is claiming the same distance out into the Gulf as the State of Texas and the **State of Florida, with approval by the United States Congress.**

"The matter of nine miles or ten and one-half miles all depends upon whether you are talking about geographic miles or statutory miles. I believe it is. Anyway, we are claiming the same distance; actually three leagues or ten and one-half statutory miles . . ." (appendix 36-37).

17. **Hon. Frank G. Millard,** Attorney General of Michigan, in his statement before the above mentioned committee, stated that,

"The Holland Bill (substantially identical with the Submerged Lands Act) simply recognizes the long-established good-faith claims of all the forty-eight States and establishes, confirms, and restores to every State in the Union the ownership and con-

trol of all this type of property located within their respective **historic boundaries.**" (appendix 36).

18. **Hon. Douglas McKay**, Secretary of the Interior, in 1953, stated before the above mentioned committee, as follows:

Secretary McKay: "Yes, sir, of the historic boundaries. In most cases of these States, it is three miles at sea, **except in Texas and Florida, where it is, of course, three leagues.**" (appendix 44).

19. **House Report No. 1778, accompanying H. R. 5992, 2nd Session, 80th Congress,** which was substantially identical with the Submerged Lands Act of 1953, which was made a part of House Report No. 215, accompanying the Submerged Lands Act (H. R. 4198), states that:

**"In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending three marine leagues seaward and a like distance into the Gulf of Mexico.** Texas' boundary was fixed three leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement." (page 1427, Legislative History Commentaries, 83rd Congress, 1st Session, published by

West Publishing Company and Edward Thompson Company.)

The above quoted language from House Report No. 1778, appeared in Senate Report No. 1592, which accompanied S. B. 1988, of the 2nd Session of the 80th Congress, which Senate bill was substantially identical, if not identical, with the present Submerged Lands Act (page 1516, Legislative History Commentaries, supra).

20. **We find in House Report No. 215,** supra, statements to the effect that the proposed legislation "deals with the rights and claims by the States to lands and resources beneath navigable waters **within their historic boundaries** . . . ," and that the term "boundaries," as used in the Submerged Lands Bill and similar bills "includes the **historic seaward boundaries** of the States in the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico . . . as they were upon entrance of the State into the Union or as has been or shall be approved by Congress. . . ." House Report No. 695, of the First Session of the 82nd Congress, which accompanied a bill substantially identical with the Submerged Lands Act, stated that said bill "recognizes, confirms, vests and establishes in the States the title to the sub-

merged lands which they have long claimed, over which they have always exercised all the rights and attributes of ownership . . . ."

The government in its brief (pages 270, et seq.) gives extracts taken from arguments made in Congress concerning the constitutions of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida, submitted under and pursuant to the Acts of Congress of March 2 and 22, 1867 (14 Stat. 428 and 15 Stat. 1) and which were recognized and approved by the act of June 25, 1868 (15 Stat. 73), showing the attitude of certain members of Congress upon the authority of Congress in connection with the said constitutions so submitted. These extracts merely show the attitude and thoughts of certain members of the Congress, and not what Congress actually did in the matter. Reference in this connection may be made to pages 2414, 2436, 2437. 2445, 2447, 2448, 2461, 2465, 2858, 2859, 2862, 2927, 2930, 2931, 2934, 2935, 2968, 2969, 2998, et seq., 3017, 3018, 3022, 3090, 3091 and 3093, of the Congressional Globe, 2nd Session, 40th Congress, as well as pages 239, 279 and 349 of the appendix to said Globe. See also Congressional Globe of the 41st Congress, 2nd Session, page 253 and appendix pages 19, 27, 29, 31, 36, 37, 42, 45, 69, 72 and 118, for such proceedings before Congress and what actually

transpired.

**Conclusions.**—The authorities, facts and circumstances presented from this portion of this brief demonstrate that:

(1) The Submerged Lands Act dealt with the claims of the coastal states to lands and resources within and beneath the navigable waters within their historic boundaries; which act merely f[illegible]es as law of the land that which, throughout our history prior to the decision of this Court in the California case, in 1947, was generally believed to be the law of the land.

(2) The term, **"heretofore approved by Congress,"** used in connection with historic state boundaries, requires neither a formal or express approval by Congress; there being no requirement that the approval by Congress be a formal or express approval, such approval, like the consent or approval of Congress required under clause 3, section 10, article I, of the United States Constitution, to compacts between states, may be implied from circumstances.

(3) Committee reports, legislative records, and statements of members of Congress (First Session, 83rd Congress) clearly

show that Congress had in mind the Florida Constitution of 1868 when the provisions of the Submerged Lands Act relative to **Approval By Congress** of state boundaries subsequent to statehood was written into the said act. The Congress of 1868, by its approval, whether implied or express, of the Florida Constitution of 1868, approved the Florida state boundaries set out in the said constitution.

(4) The Reconstruction Acts of 1867 required that the rebel states adopt (new) state constitutions (not parts or portions of constitutions, but entire constitutions) to be "submitted to Congress for examination and approval. . . ." Had any part of the state constitution submitted to Congress by Florida in 1868, which was clearly before Congress for examination and determination whether it met the requirements of the Reconstruction Acts, failed to meet the approbation of the Congress it is reasonable to suppose that its dissent would have been expressed in some form. After Florida's 1868 Constitution was submitted to Congress, her representatives to Congress were qualified and seated; it must, therefore, be presumed that the entire state constitution received the approval of Congress, otherwise the delegation to Congress from Flor-

ida would not have been seated.

(5) It is apparent that the description of the boundaries of Florida, contained in the Florida Constitution of 1868, was "approved by Congress," within the purview and intent of the Submerged Lands Act.

(6) The defendant states may acquire, hold and administer property and property rights beyond their territorial limits, including property and property rights claimed by the United States and transferred to them.

— B —

**FLORIDA'S SEAWARD BOUNDARY IN THE GULF OF MEXICO EXTENDED MORE THAN THREE GEOGRAPHIC MILES INTO THE SAID GULF FROM HER COAST LINE, PRIOR TO AND AT THE TIME SHE BECAME A MEMBER OF THE UNION.**

**Boundary at time of statehood.**—The Act of Congress of March 3, 1845 (5 Stat. 742) admitting Florida as a State of the Union, provided that "said State of Florida shall embrace the Territories of East and West Florida, **which by the Treaty of Amity, Settlement and Limits** be-

tween the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, **were ceded to the United States"** (emphasis supplied). This raises the question of what were the boundaries of the Territories of East and West Florida, which were ceded to the United States by Spain by the said Treaty of Amity, Settlement and Limits. The Act of Congress of March 30, 1822 (3 Stat. 654) establishing the Territory of Florida provided that the said Territory consisted of the **"Territory ceded by Spain to the United States, known by the name of East and West Florida"** (emphasis supplied). Section 1, Article XII, of Florida Constitution of 1838, provided that "The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which by the Treaty of Amity, Settlement and **Limits,** between the United States and His Catholic Majesty, on the 22nd day of February, A. D. 1819, **were ceded to the United States** (emphasis supplied). Spain, by Article II, of the Treaty of Amity, Settlement and Limits of February 22, 1819, ceded to the United States **"all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida.** The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents

which relate directly to the property and sovereignty of said province, are included in this article." (emphasis supplied).

**Boundaries of the Floridas at time of treaty with Spain.**—Under the Florida Statehood Act (5 Stat. 742), as well as under her State Constitution at time of statehood (State Constitution of 1838), the territories of the state embraced "the Territories of East and West Florida, which by the Treaty of Amity, Settlement . . . were ceded to the United States." This leads to an inquiry as to the extent of the territories so ceded by Spain to the United States. Spain obtained the Floridas from Great Britain, through the "Definitive Treaty of Peace and Friendship," signed at Versailles on September 3, 1783, by which "His Britannic Majesty moreover cedes and guarantees, in full ownership, to His Catholic Majesty, Eastern as well as Western Florida;" however, without any more specific description of boundaries. Prior to said cession of the Floridas to Spain on September 3, 1783, the King of England, by proclamation of October 7, 1763 (Annual Register, 1763, pages 208 ff) declared that "The Government of East Florida, (was) bounded to the Westward by the Gulf of Mexico and the Apalachicola river . . . and to the East and South by the Atlantic Ocean and the Gulf of Florida, **including all islands within six leagues of the sea coast** . . . ," and

that "The Government of West Florida (was) bounded to the Southward by the Gulf of Mexico, **including all islands within six leagues of the coast,** from the river Apalachicola to Lake Pontchartrain . . . ." Each of these descriptions contains the phrase **"including all islands within six leagues of the coast."** The treaty of September 3, 1783, transferred to Spain the territories described by the said proclamation of October 7, 1763. England had obtained the Floridas from Spain through the Definitive Treaty of Friendship and Peace, concluded at Paris on February 10, 1763, by which Spain ceded and guaranteed "in full right, to his Britannic Majesty Florida, with Fort St. Augustine and the Bay of Pensacola, **as well as all that Spain possesses on the continent of North America to the east or to the southeast of the river Mississippi;** and in general, everything that depends on said countries and lands, with the sovereignty, property, possession, and all rights, acquired by treaties or otherwise, which the Catholic King and Crown of Spain have had till now over said countries, lands, places and their inhabitants. . . ." (emphasis supplied).

**Florida's boundaries compared to other Gulf states.**—It seems clear from the above and foregoing that the boundaries of the State of Florida at the time of statehood, and as described in her constitution of 1838, embraced the territory

ceded by Spain to the United States by the treaty of February 22, 1819. Spain, having obtained the Floridas from Great Britain in 1783, it must be presumed that she obtained the territory claimed by Great Britain under the above proclamation of October 7, 1763, which described the Floridas being bounded by the Gulf of Mexico, "including all islands within six leagues of the sea-coast. . . ." **The Louisiana Enabling Act** (2 Stat. 641) and act for admission into the Union (2 Stat. 701), which are set out on pages 324-326 of the plaintiff's brief, described the state boundaries as ". . . , thence bounded by the said gulf to the place of beginning, **including all islands within three leagues of the coast. . . .**" **The Mississippi Enabling Act** (3 Stat. 48) and state constitution of 1817 and resolution admitting her to the Union (plaintiff's brief 252, et seq.) described her boundaries as ". . . , thence due south to the Gulf of Mexico, thence westwardly, **including all islands within six leagues of the shore,** to the most eastern junction of Pearl River with Lake Borgne. . . ." The Alabama Enabling Act (3 Stat. 489) and constitution at time of statehood (plaintiff's brief page 260) described her boundaries as ". . . , thence due south, to the Gulf of Mexico, thence eastwardly, **including all islands within six leagues of the shore,** to the Perdido river. . . ." **The statehood description of Flor-**

**ida, as to boundary in the Gulf of Mexico, being in substance the same as Louisiana, Mississippi and Alabama, the same rules of construction are applicable to it as are applicable to the boundary description of the said other three states; this being true, Florida adopts their arguments on this point as the argument of Florida.**

**Spain's boundary claims at or near time of cession of the Floridas to the United States.**— In a Preliminary Treaty between Great Britain, France and Spain, of November 3, 1762 (1 Martens 92) it was stipulated that fishing in the Gulf of St. Lawrence should not be exercised "but at a distance of **three leagues** from all the coasts belonging to Great Britain. . . ." In a convention between France and Spain of December 27, 1774 (2 Martens 362) it was stipulated that boats up to 100 tons displacement found carrying any kind of contraband were prohibited from being within **two leagues** on the sea of ports, mouths of rivers, and landing places on the coast. To the same effect see Spanish Royal Resolution of May 1, 1775 (2 Riquelme 197). By the Treaty of Peace and Commerce of December 24, 1782, between Spain and the Ottoman Empire, it was stipulated that the parties would not permit ships of the other **within sight** of their coast to be chased or molested. It was stipulated in the Treaty of Peace and Amity between Spain and Tripoli, of September 10, 1784,

that "Tripolitanian warships and privateers can not capture any vessel belonging to their enemies at a distance of **ten leagues** from the coasts of the dominions of Spain" (3 Martens 402, 414; 1 Ferrater 488-489). Under the Treaty of Peace and Amity between Spain and Algeria, of June 14, 1786 (4 Martens 126) it was stipulated that where a Spanish merchant ship was attacked by the enemies of Spain **within a cannon shot** of an Algerian fortress that the fortress must defend and protect it. According to the Convention between Great Britain and Spain, of October 28, 1790 (1 B. F. S. P. 666), it was stipulated that British subjects should not navigate, or carry on their fishery within the space of **ten sea leagues** of the coasts already occupied by Spain. A Spanish decree of May 3, 1830 (2 Riquelme 200), stipulated that ships of less than two hundred tons carrying contraband should not sail within six marine miles from Spanish territory. In the correspondence between William H. Seward, Secretary of State of the United States, and Horatio J. Perry, Madrid, Spain, of August 14, 1863, it seems evident that Spain claimed an international boundary around Cuba of six marine miles or two leagues. (Diplomatic Correspondence of 1863, part 2, page 905). Other correspondence between Secretary Seward and a Mr. Burnley, of September 16, 1864, shows that Spain then claimed a six mile or two league international

boundary around Cuba. (Diplomatic Correspondence of 1864, page 708).

In the Treaty of Peace, Friendship, Limits and Settlement, between the United States and Mexico, signed at Guadalupe Hidalgo February 2, 1848, the boundary between the two republics was declared to "commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande. . . ." (37 B. F. S. P. text 569-571). This boundary in the Gulf of Mexico was repeated in the Treaty of Limits, entered into by the same parties, on December 30, 1853 (42 B. F. S. P., text 725-726). The President of the United States by proclamation of June 2, 1856 (47 B. F. S. P. 789-790) declared the boundary between the United States and Mexico as "beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande" as provided in the above mentioned treaties. Mexico prior to its cession was a territory of Spain, and doubtless claimed the same seaward boundary as was claimed by Spain.

I. Ovchinnikov (Morskoi Sbornik, 1-2, 1899, page 60) in his discussion of the extent of the Territorial Sea, states that certain states take the extent of the territorial sea to be three miles, Spain six miles; Norway, four miles, etc. Amos S. Hershey, in his "The Essentials of Interna-

tional Public Law," 1912, stated that "in 1894, the Institute of International Law, after an exhaustive discussion on the question, voted by a decisive majority . . . in favor of a zone of six marine miles for all territorial purposes . . ." (page 340 ff). Jesse S. Reeves, in his article on Codification of the Law of Territorial Waters (24 American Journal of International Law, 1930, at page 492), remarks that "the following countries declared for a six mile width: Brazil, Colombia, Cuba, **Spain**, Italy, Latvia, Persia, Portugal, Roumania, Turkey, Uruguay, Yugoslavia, twelve . . . ." Green H. Hackworth, in his Digests of International Law, 1940, by a table shows that Spain at the Conference held at The Hague in 1930 favored a seaward boundary of six marine miles. At the recent conference held in Geneva, Switzerland, as per table prepared by the Secretariat, Spain claimed a territorial sea of six miles.

**Seaward boundaries between 1763 and 1870.**—Thomas Jefferson, as Secretary of State, on November 8, 1793, advised George Hammond, British Minister, in part as follows:

> ". . . The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated upwards of twenty miles, and the smallest distance I

believe, claimed by any nation whatsoever is the utmost range of a cannon ball, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessel of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation . . ." (6 Writings of Jefferson, pages 441 and 442).

Chancellor Kent stated the attitude of the United States on this question as follows:

". . . in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, the natural indication furnished by the well defined path of the Gulf Stream, to expect an immunity for belligerent warfare, for the space between that limit and the American shore." (1 Kent, Commentaries of American Law, 1826 edition, page 30).

Chief Justice Marshall, in Church v. Hubbart, 6 U. S. (2 Cranch) 187, text 235, 2 L. ed. 249, text 265, stated that,

". . . In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of government, will be assented to. Thus in the channel, where a very great part of the commerce to and from the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the government may be extended somewhat further . . . ."

Long before Jefferson, publicists of many nations advocated three leagues as the proper extent of national territorial jurisdiction.

These recommendations continued; irrespective of the range of cannon, until well after 1870. Three leagues was used in treaty practices of states from 1763 to 1899. (see Joint or Common Brief of defendants, pages 84 to 88).

**Conclusion.**—It seems evident from the above authorities that Spain, when she ceded the Floridas to the United States in 1819, claimed a tertorial sea for the Floridas in excess of one marine league or three miles. There is ample evidence that at least a three league boundary was

claimed by Spain and ceded by her to the United States under the above treaty of 1819. This being true, Florida's seaward boundaries, under her constitution and act of admission, extended beyond three geographic miles into the Gulf of Mexico, to wit, not less than three leagues.

— C —

## THE SO-CALLED INTERNATIONAL THREE MILE BOUNDARY IS NOT AN ABSOLUTE NATIONAL OR STATE BOUNDARY, BUT IS A BOUNDARY LIMITED FOR CERTAIN PURPOSES.

**Two separate governments involved, neither complete within itself.**—"We have in our political system a government of the United States and a government of each of the several states. Each one of these governments is distinct from the others." (United States v. Cruikshank, 92 U. S. 542, text 549, 23 L. ed. 588, text 590). "The people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence" without which there "could be no such political body as the United States" (County of Lane v. Oregon, 74 U. S. 71, text 76, 19 L. ed. 101, text 104; Texas v. White, 74 U. S. 700, text 725, 19 L. ed. 227, text 237). In the United States "the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign with

respect to the objects committed to it, and neither sovereign, with regard to the objects committed to the other" (McCulloch v. Maryland, 17 U. S. 316, text 410, 4 L. ed. 579, text 602). "The powers of the General Government, and of the State, although both exist and **are operated within the same territorial limits,** are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres" (Feldman v. United States, 322 U. S. 487, text 491, 64 S. Ct. 1082, 154 A. L. R. 982, 88 L. ed. 1408, text 1413; see also Ableman v. Booth, 62 U. S. 506, text 516, 16 L. ed. 169, text 173). "The governments of the States possess all the powers of the Parliament of England, except such as have been delegated to the United States or reserved by the people" (Carter v. Carter Coal Company, 298 U. S. 238, text 294, 56 S. Ct. 855, 80 L. ed. 1160, text 1180). See also Buffington v. Day, 78 U. S. 113, text 124, 20 L. ed. 122, text 126; Chisholm v. Georgia, 2 U. S. 418, text 435; 1 L. ed. 440, text 447; Burnet v. Brooks, 288 U. S. 378, text 396, 53 S. Ct. 457, 77 L. ed. 844, text 852, 86 A. L. R. 747; Fong Yue Ting v. United States, 149 U. S. 698, text 711, 13 S. Ct. 1016, 37 L. ed. 905, text 912.

**Federal powers.**—"As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government nec-

essary to maintain an effective control of international relations" (Burnet v. Brooks, 288 U. S. 378, text 396, 53 S. Ct. 457, 86 A. L. R. 747, 77 L. ed. 844, 852; see also Carter v. Carter Coal Company, 298 U. S. 238, text 295, 56 S. Ct. 855, 80 L. ed. 1160, text 1180; Fong Yue Ting v. United States, 149 U. S. 698, text 705, 13 S. Ct. 1016, 37 L. ed. 905, text 910). "The determination of the Framers' Convention and the ratifying conventions to preserve complete and unimpaired state self-government in all matters not admitted to the general government is one of the plainest facts which emerges from the history of their deliberations. And adherence to that determination is incumbent upon the federal government and the states. State powers can neither be appropriated on the one hand nor abdicated on the other" (Carter v. Carter Coal Company, supra). The powers of the general government differ "in respect of foreign or external affairs and those in respect to domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be doubted. The two classes of powers are different, both in respect of their origin and their nature." The statement that the federal government is entirely one of delegated powers "is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possess-

ed by the states such portion as it was thought desirable to vest in the Federal government, leaving those not included in the enumeration still in the states . . . ." (United States v. Curtiss-Wright Export Corporation, 299 U. S. 304, text 315 and 316, 57 S. Ct. 216, 81 L. ed. 255, text 260). We are here dealing not with some relationship between the United States and a foreign power, but with a question of ownership of property and property rights as between the United States and some of the States of the Union. There is at present no argument between the United States and a foreign power as to the location of the international boundary of the United States, or of the State of Florida, in the Gulf of Mexico.

**State powers.**—When the United States Constitution was adopted it carved from the general mass of legislative powers then possessed by the state (the general powers of independent nations) such portion as it was thought desirable to vest in the federal government, leaving all other powers of nations vested in the states. Thus the general powers of sovereignty are divided between the states and the federal government; each being completely sovereign as to the powers possessed by it. These powers are usually operated within the same territorial limits. Only in the field of international relations is the federal government completely sovereign. Al-

though the general government may not delegate to the states control of international relations, there is no rule of law preventing it transferring to the states property and property interests held by it, although such property and property rights may lie outside of the so-called international three-mile boundary.

**National boundaries for different purposes.**—At the United Nations Conference on the Law of the Sea held in Geneva, Switzerland, in 1958, the First Committee (Territorial Sea and Contiguous Zone) passed a resolution at its fourteenth meeting, March 13, 1958, requesting the Secretariat to draft a synoptical table listing the breadth of the territorial sea and the breadth of special purpose provisions, which table divides the special purpose areas or boundaries into provisions relating to **Customs, Security, Criminal Jurisdiction, Civil Jurisdiction, Fishing, Neutrality** and **Sanitary regulations.** It appears from this table that such special jurisdictions often differ considerably from the general breadth of the so-called territorial sea. To the same effect see also the table to the work entitled Problema Territorial 'nykh vod v Mezhdunarodom Prave Soviet (Science of International Law on the Concept of Territorial Waters) A. N. Nikolaev, Moscow; Gosudarsvennoe Izdatel'stvo Yuridicheskoi Literatury, 1954. These special zones were mentioned by

I. Ovchinnikov, in his work on the territorial sea published in 1899. Special territorial limits were provided for in the Preliminary Treaty between Great Britain, France and Spain, of November 3, 1762, article III (1 Martens 92) and a treaty between the same parties of February 10, 1763 (1 Martens 108), and in the Convention of October 28, 1790 between Great Britain and Spain, relative to America (1 F. S. P. 663). Other examples are the liquor treaties (Philip C. Jessup, The Law of Territorial Waters and Maritime Jurisdiction, pages 279-352) and the fisheries treaties (Colombo, International Law, 3rd, 110-122, sections 121-130), and the British "Hovering Acts" passed at the beginning of the eighteenth century. Other examples might be given. These authorities clearly show that the so-called special zones are in fact special territorial limits for specific purposes. A state may have different boundaries for different things, although they may be designated as special zones or otherwise.

This Court, in United States v. California, 332 U. S. 19, text 35, 67 S. Ct. 1658, 91 L. ed. 1889, text 1897 (quoted with approval in United States v. Texas, 339 U. S. 707, text 718, 70 S. Ct. 918, 94 L. ed. 1221, text 1227), stated that:

> "The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from

dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations . . . ."

**Purpose of Section six of Submerged Lands Act.**—The retention of rights and powers to the United States, by section 6 of the Submerged Lands Act (section 1314, title 43, United States Code; 67 Stat. 32), was evidently designed to enable the United States to carry out the duties and obligations mentioned in the above quotation from United States v. California, supra, notwithstanding the transfer of certain prop-

erty and property rights to the states by the Submerged Lands Act. This section of the statutes provides that:

(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 1311 of this title.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor. May 22, 1953, C. 65, Title 11, §6, 67 Stat. 32.

**Hackworth, in his Digest of International Law,** page 674, makes the following observation:

> ... Vattel's statement: 'Who can doubt that the pearl fisheries of Bahrein and Ceylon may lawfully become property?' ceases to cause any difficulty to even the stoutest upholders of the principle that the limits of the territorial belt are not more than three miles **if it is realized that the exclusive right to the pearls to be obtained from the banks flowed from the ownership of the bed of the sea where the banks were situated, and not from any claim to maritime jurisdiction over the waters.** (emphasis supplied)

And on page 676:

> It cannot be too strongly emphasized that **the recognition of special property rights in areas of the bed of the sea outside the marginal belt for the purpose of sedentary fishing does not conflict in any way with the common enjoyment by all mankind of the right of navigation of the waters lying over those beds or banks.** Nor does it entail the recognition of any special or exclusive right to the capture of swimming fish over or around these beds or banks. (emphasis supplied)

Oppenheim, in the last edition of his treatise on International Law, states that:

> Since the open sea is free, no part of it can be the object of occupation, nor can rocks or banks in the open sea, although lighthouses may be built on them. Likewise the bed of the sea cannot be an object of occupation, but the **subsoil of the bed of the open sea** may become the object of occupation through driving mines and piercing tunnels from the coast.
>
> . . . Although it is traditional to base some of these cases on the ground of prescription, it is submitted that it would be not inconsistent with principle, and would be more in accord with practice, to recognize frankly that, as a matter of law, a State may by strictly local occupation acquire, for sedentary fisheries and for other purposes, sovereignty and property in the surface of the sea-bed, provided, that in so doing it in no way interferes with freedom of navigation and, perhaps we should add, with the breeding of free-swimming fish.
>
> . . . The rationale of the open sea being free and forever excluded from occupation on the part of any State is that it is an international highway, which connects distant

lands, and thereby secures freedom of communication, and especially of commerce, between States separated by the sea. There is no reason whatever for extending this freedom of the open sea to the subsoil beneath its bed. On the contrary, there are practical reasons—taking into consideration the building of mines, tunnels, and the like—which compel recognition of the fact that this subsoil can be acquired through occupation.

General reference is here made to pages 672 to 680 (section 200), Hackworth's Digest of International Law, Volume II.

See also Colombo International Law of the Sea, at pages 56, 58, 59, 306, 307, sections 73, 75 and 353; Juraj Andrassy's Epikontinental Nipojas (Zagreb, 1951); paper prepared by William W. Bishop, Jr., Professor of Law, University of Michigan Law School, for the Sixth Conference of the Inter-American Bar Association, May 1949; Charles Rousseau, Droit International Public, 1953, page 442; and T. Nakamura, writing in the Journal of Law, Politics and Sociology, Hogaku Kenkyu, Volume 27, pages 27, ff.

**Theory of Presidential Proclamation, etc.**—The Presidential Proclamation No. 2667 of

September 28, 1945 (10 Fed. Reg. 12, 303), contains the following sentence:

> The character as high seas of the waters above the continental shelf and the right of their free and unimpeded navigation are in no way thus affected.

And, the Submerged Lands Act, in section six thereof, provides that the

> . . . United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs . . . .

These provisions seem to have in mind and to substantially follow the separation and separate administration of the high seas and of the submerged lands and the minerals and other things therein.

**Conclusion.**—Although the Government of the United States and the Government of the several States of the Union are separate and distinct governments, neither is completely sovereign within itself. The powers of sovereignty, in the words of this court in McCulloch v. Maryland, 17 U. S. 316, 4 L. ed. 579, "are divided

between the government of the Union and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign, with regard to the objects committed to the other." The powers of the General Government, and of the States, in the words of this court in Feldman v. United States, 322 U. S. 487, 64 S. Ct. 1082, 88 L. ed. 1408, "Although both exist and are operated within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres." We are here dealing directly with a question of ownership of property and property rights, and the conveyance and transfer of such property and property rights from the United States to the Gulf Coast States, and only incidentally with questions of international boundaries. We are here dealing with the ownership of property and property rights within the lands under the sea and not with a question of maritime jurisdiction over the waters of the sea. The special property and property rights here considered lie under the waters of the sea and such ownership does not in any way conflict with the enjoyment of the right of navigation of the waters lying over the sea where such property and property rights are located. A clear distinction may be drawn between the bed of the sea and its subsoil. The property and property rights here involved belong to the subsoil under

the sea rather than to the sea itself. We, therefore, submit that the three mile international boundary, even if here applicable, relates only to the use of the high seas, including the use of the floor of the sea for the purposes of anchoring boats and vessels, and do not constitute an absolute state or national boundary. It is a boundary limited for certain purposes. It does not prevent a conveyance and transfer of property and property rights to a state although such property and property rights may lie without the boundaries of such state.

Second question.

**IS THE UNITED STATES ENTITLED TO AN ACCOUNTING BY THE STATE OF FLORIDA FOR ANY SUMS OF MONEY DERIVED BY HER AFTER JUNE 5, 1950, FROM SUCH LANDS, MINERALS AND OTHER THINGS LYING OFF HER COAST?**

**Release of claims against the states.**—Congress, by the Submerged Lands Act of May 22, 1953, in addition to the conveyance and transfer of the property and property rights therein described to the defendant states, also released and relinquished "all claims of the United States, if any it has, for money or damages arising out of any operations of said states or per-

sons pursuant to state authority upon or within said lands and navigable waters," (43 U. S. C. Supp. V, 1311), that is, the lands, minerals and other things conveyed by the Submerged Lands Act. It is clear from the arguments made in the joint and common brief of the defendant states, and in this brief of the State of Florida, that the properties which are made the subject matter of this litigation passed by the Submerged Lands Act to the State of Florida and that any claims for damages or otherwise, which the United States may have had, prior to the enactment of the said Submerged Lands Act, against the State of Florida, were released to the said state by the Submerged Lands Act, so that, nothing is now due or owing by the State of Florida to the United States in this connection.

## CONCLUSION

In conclusion, the State of Florida, one of the defendants herein, submits that:

1. The present controversy is a domestic dispute, as to the geographical extent of the property and property rights transferred to the defendant states by the Submerged Lands Act, which Act granted the property and property rights therein described to the states and did not fix state and national boundaries, or either of them.

2. The property and property rights described in the Submerged Lands Act were property and property rights belonging to the United States subject to conveyance and transfer by Congress pursuant to clause 2, section 3, Article IV, of the United States Constitution, whether located within or without state boundaries.

3. There is no prohibition, legal or otherwise, against a State of the Union taking title to and owning and administering property and property rights, including the lands, minerals and other things described in the said Submerged Lands Act, located beyond its state boundaries.

4. Florida's historical boundaries in the Gulf of Mexico, under the provisions of the said Submerged Lands Act, include the boundaries described in Article "I" of the Florida Constitution of 1868, which were approved by Congress within the purview and intention of the said Submerged Lands Act.

5. Congress, while considering legislation which became the Submerged Lands Act, as well as like and similar other legislation, clearly, as is shown by Congressional and Committee records and reports,

had in mind the Florida Constitution of 1868 and the proceedings in the 1868 Congress concerning the adoption and approval of the same.

6. Congress, prior to the effective date of the Submerged Lands Act (May 22, 1953), and during its 1868 session or sessions, approved the boundaries of the State of Florida as set out in the Florida Constitution of 1868; that is, a boundary three leagues from low-water mark in the Gulf of Mexico.

7. Florida's seaward boundaries in the Gulf of Mexico, at the time she became a member of the Union, extended three marine leagues or more into the Gulf of Mexico from the low-water mark. Florida was admitted into the Union as embracing the "Territories of East and West Florida, which, by the Treaty of Amity, Settlement, and Limits between the United States and Spain . . . were ceded to the United States." Spain claimed and was possessed of a seaward boundary in the Gulf of Mexico of three leagues at the time of the said cession to the United States.

8. The so-called international three mile boundary, if a boundary at all, is but a

limited one, used primarily for seafaring purposes and not as an absolute boundary for all purposes. There appears to be different international boundaries for different purposes; for example, Customs, Security, Civil and Criminal Jurisdiction, Fishing, Neutrality, Sanitary Regulations, etc.

9. Neither the United States nor the States of the Union are strictly sovereign within themselves, each being limited sovereigns (but neither completely sovereign), operating within the same territory in continental United States. The right and power of the several states to own and hold property and property rights beyond their boundaries are equal to, if not greater than, that of the United States..

10. (a) The effort of the plaintiff to defeat Florida's rights acknowledged or granted by the Submerged Lands Act is manifestly a die-hard one. Despite the abrogation by the Congress of the Presidential Proclamation No. 2667, September 28, 1945, 10 Fed. Reg: 12303, 59 Stat. 884, preempting the tidelands and the resulting modification of the effect of the decisions in the California (322 U. S. 19), Louisiana (339 U. S. 669) and Texas (339 U. S. 707)

cases, and notwithstanding this Court's recognition of the authority of Congress to so abrogate (Alabama v. Texas, 347 U. S. 272), the plaintiff advances in this case the most surprising and anomalous claims.

(b) To accomplish its objective of defeating the rights granted the Gulf states by the Submerged Lands Act plaintiff interjects clearly irrelevant claims based on theories of international law and then surmounts these tangential contentions by denying that Congress approved Florida's 1868 state constitutional boundary. It denies settled and unquestioned historical facts and shrugs off the action of the Congress and the President in adjusting the long standing tidelands controversy. It asks the Supreme Court of the United States to depart from plain, unmistakable principles of law, to forsake common understandings agreed upon in the nation's highest legislative councils, to abjure and disown its own latest precedent and accept in lieu the most amazing, if not shocking, farfetched contentions imaginable.

(c) The plaintiff does not and cannot contend the Submerged Lands Act is unconstitutional. Alabama v. Texas, 347 U. S. 272. However, it seeks to attain the same

result by maintaining the Act is overridden by principles of international law insofar as the Gulf states' historic boundaries are employed as a measure for the grant of proprietary rights. This proposition is advanced in the face of Presidential and Congressional official action to the contrary. It also flies in the face of applicable decisions of this Court that Congress is the ultimate determiner of national policy in fixing boundaries and in disposing of property rights of the nation.

(d) We submit it is highly inconsistent for the plaintiff to claim for the United States all of the rights of the Outer Continental Shelf Lands Act granted by the Congress, yet in the same breath deny that the Congress can grant similar rights to the Gulf Coastal States. Why is it that if international law regulating claims of all nations precludes the Gulf States from the benefits of the Submerged Lands Act, the same law does not likewise deny the United States the same benefits?

(e) We submit further it is especially inconsistent for plaintiff to claim that Congress did not approve Florida's gulf-coast boundaries in 1868 in its Reconstruction Constitution of that year when for

ninety years the Congress has raised no question concerning these settled boundaries and has allowed the state to function under this and a succeeding constitution with identical state boundaries and exercise recognized and traditional state jurisdiction within these boundaries.

(f) We cannot believe that the Court will on the basis of the unreal contentions advanced by the plaintiff open this old sore and leave for judicial history a decision utterly contrary to what every one who had any knowledge of the subject knows was never intended by the Submerged Lands Act.

(g) We have demonstrated that the Submerged Lands Act had direct reference to Florida's boundaries as contained in its 1868 Reconstruction Constitution which was approved by Congress that same year. We have shown that this boundary by the express language of the 1868 State Constitution and as repeated in the present state constitution extends three marine leagues into the Gulf of Mexico. Consequently, we respectfully submit that the State of Florida is entitled to judgment against the plaintiff.

Respectfully submitted,

SPESSARD L. HOLLAND
Of Counsel

RICHARD W. ERVIN
Attorney General

J. ROBERT McCLURE
First Assistant Attorney General

FRED M. BURNS
Assistant Attorney General

ROBERT J. KELLY
Assistant Attorney General

IRVING B. LEVENSON
Assistant Attorney General

SOLICITORS FOR THE STATE OF FLORIDA

## . AN ACT OF MARCH 2, 1867. CHAPTER CLIII
### (14 Statutes at Large 428-430)

**An Act to provide for the more efficient Gov-rnment of the Rebel States.**

Whereas no legal State governments or ade-uate protection for life or property now exists n the rebel States of Virginia, North Carolina, outh Carolina, Georgia, Mississippi, Alabama, ouisiana, Florida, Texas, and Arkansas; and hereas it is necessary that peace and good rder should be enforced in said States until oyal and republican State governments can be egally established: Therefore,

**Be it enacted by the Senate and House of epresentatives of the United States of Amer-ca in Congress assembled,** That said rebel tates shall be divided into military districts nd made subject to the military authority of he United States as hereinafter prescribed, nd for that purpose Virginia shall constitute he first district; North Carolina and South arolina the second district; Georgia, Alabama, nd Florida the third district; Mississippi and rkansas the fourth district; and Louisiana nd Texas the fifth district.

* * *

**SEC. 5. And be it further enacted,** That hen the people of any one of said rebel States hall have formed a constitution of government n conformity with the Constitution of the

United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: **Provided**, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United

States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

## 2. AN ACT OF MARCH 22, 1867. CHAPTER VI
### (15 Statutes at Large 1-5)

**An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration.**

**Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,** That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled, "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I, ————, do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the State of ————; that I have resided in

said State for ———, months next preceding this day, and now reside in the county of ———, or the parish of ———, in said State (as the case may be); that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God"; which oath or affirmation may be administered by any registering officer.

**SEC. 2. And be it further enacted,** That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty

days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such State by the commanding general, giving to each representation in the ratio of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature of said State in the year eighteen hundred and sixty, to be apportioned as aforesaid.

**SEC. 3. And be it further enacted,** That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under this act. Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates, as aforesaid, the words "For a convention; and the commanding general to convention shall have written or printed on such ballots the words "Against a convention." The persons appointed to superintend said election, and to make return of the votes given thereat, as herein provided, shall count and make return of the votes given for and against

a convention; and the commanding general to whom the same shall have been returned shall ascertain and declare the total vote in each State for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: **Provided,** That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

**SEC. 4. And be it further enacted,** That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a

constitution and civil government according to the provisions of this act, and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election be be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

**SEC. 5. And be it further enacted,** That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall moreover appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the

qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

* * *

### 3. AN ACT OF JUNE 25, 1868. CHAPTER LXX
(15 Statutes at Large 73-74)

**An Act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to Representation in Congress.**

WHEREAS the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of an act entitled "An act for the more effieient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and the acts supplementary thereto, framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,

**Be it enacted by the Senate and House of Representatives of the United States of Amer-**

ica in Congress assembled, That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, shall be entitled and admitted to representation in Congress as a State of the Union when the legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen, upon the following fundamental conditions: That the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State, who are entitled to vote by the constitution thereof herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: **Provided**, That any alteration of said constitution may be made with regard to the time and place of residence of voters; and the State of Georgia shall only be entitled and admitted to representation upon this further fundamental condition: that the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision, shall be null and void, and that the general assembly of said State by solemn public act shall declare the assent of the State to the foregoing fundamental condition.

**SEC. 2. And be it further enacted**, That if

the day fixed for the first meeting of the legislature of either of said States by the constitution or ordinance thereof shall have passed or have so nearly arrived before the passage of this act that there shall not be time for the legislature to assemble at the period fixed, such legislature shall convene at the end of twenty days from the time this act takes effect, unless the governor elect shall sooner convene the same.

**SEC. 3. And be it further enacted**, That the first section of this act shall take effect as to each State, except Georgia, when such State shall, by its legislature, duly ratify article fourteen of the amendments to the Constitution of the United States, proposed by the Thirty-ninth Congress, and as to the State of Georgia when it shall in addition give the assent of said State to the fundamental condition hereinbefore imposed upon the same; and thereupon the officers of each State duly elected and qualified under the constitution thereof shall be inaugurated without delay; but no person prohibited from holding office under the United States, or under any State, by section three of the proposed amendment to the Constitution of the United States, known as article fourteen, shall be deemed eligible to any office in either of said States, unless relieved from disability as provided in said amendment; and it is hereby made the duty of the President within ten days after receiving official information of the ratification of said amendment by the legis-

lature of either of said States to issue a proclamation announcing that fact.

## 4. EXTRACTS FROM JOURNALS OF PROCEEDINGS OF 1868 CONSTITUTION

## PROCEEDINGS OF THE CONVENTION

### FIRST DAY

### MONDAY, January 20, 1868.

The People of the State of Florida, on this the twentieth day of January, one thousand eight hundred and sixty-eight, through their delegates chosen in pursuance of the Act of Congress entitled "an act to provide for the more efficient government of the rebel States," and the act supplementary thereto, assembled in Convention, in the Representative Hall in the Capitol, at Tallahassee, and thereupon, on motion, C. H. Pearce of the sixth district was appointed temporary Chairman, and H. Ford Secretary.

* * *

Page 8

Mr. Pearce, of the 6th District, offered the following resolution:

**Resolved,** That this Convention telegraph to Gen. Meade, informing him of the permanent organization of this body, and that we are in

a condition to receive any communication that he may be pleased to make;

Which was adopted.

* * *

Pages 9-10

HALF-PAST TWO O'CLOCK, P. M.

The Convention resumed its session.

The following telegram was received from Gen. Meade:

"I regret that my public duties prevent my complying with your invitation to visit your Convention. I have no communication to make beyond calling your attention to the remarks made to the Georgia Convention, and urging prompt action upon your part in the important duty assigned to you, and the earnest hope that you will speedily form a Constitution and frame a civil government acceptable to the people of Florida and the Congress of the United States. Signed, "Major General GEORGE MEADE."

Which was read.

* * *

Page 47

Mr. Purman from the Committee on Eligibility made the following report:

The undersigned, members of the Committee

on Eligibility, beg leave to report that after due inquiring into, and examination of the claims of Daniel Richards returned as delegate to this Convention from the 4th Election District, they find upon conclusive evidence that he is not a registered voter in, nor an inhabitant of the District from which he is returned, and that in consequence his claims as a delegate are not in accordance with the requirements of the Reconstruction Acts, with the provisions of the Constitution of the State of Florida, nor in harmony with the general principles of our representative government, as fully set forth in the report of your Committee on the claims of W. H. Saunders et. al.

Your Committee are after mature deliberation, clearly of the opinion that he is not eligible to a seat on this floor, and recommend the passage of the following resolution.

**Resolved,** By the Constitutional Convention of the State of Florida, that Daniel Richards returned as a delegate from the 4th election district, is hereby declared ineligible to a seat in this body.

W. J. PURMAN, Chm'n.
LYMAN W. ROWLEY,
EMANUEL FORTUNE.

Upon the adoption of which the yeas and nays being called for, were:

Yeas—Mr. President, Messrs. Alden, Armistead, Bryan, Campbell, Cessna, Chandler,

Childs, Conover, Dennett, Erwin, Fortune, Howse, McRae, Mizell, Mobley, Osborn, Pearce, 16th district, Powell, Purman, Rogers, Rombauer, Rowley, Shuler and Urquhart—25.

* * *

Page 78

Mr. Osborn offered the following resolution, which was admitted under suspension of the rules and adopted:

**Resolved,** That the Sergeant-at-Arms be directed to send by mail to Col. F. F. Flint, Col. J. T. Sprague, Maj. Gen. G. G. Meade, Gen. U. S. Grant, and E. M. Stanton, Secretary of War, five copies each day of the proceedings of this Convention; to the Secretary of State, W. H. Seward, to B. F. Wade, President of the U. S. Senate, and to the Speaker of the House of Representatives, ten copies each; to Andrew Johnson, President of the United States, five copies, and to the President of each Constitutional Convention in session ten copies, and that one copy be sent to the Governor of each State in the Union.

Page 119

Mr. Cessna offered the following resolution:

**Resolved,** That the Secretary of this Convention be and he is hereby instructed to send by mail to each member of this Convention, when the same shall have been printed, ten copies of

the Journal and ten copies of the Constitution, and that the Financial Agent furnish the necessary funds to cover the expenditure incurred by carrying into effect this resolution;

Which was adopted.

* * *

Pages 122-123

Mr. Osborn offered the following ordinance:

AN ORDINANCE

To provide for submitting the Constitution to the People for Ratification.

Section 1. **Be it ordained by the People of Florida in Convention assembled,** That the Constitution, framed by this Convention, and signed on the 25th day of February, A. D. 1868, be and the same is hereby submitted for ratification to the persons registered and to be registered under the provisions of the several acts of Congress, entitled "An act to provide for the more efficient government of the rebel States," passed March 2d, 1867, "an act supplementary to an act entitled an act to provide for the more efficient government of the rebel States," passed March 2d, 1867, and to facilitate restoration "an act supplementary to an act entitled an act to provide for the more efficient government of the rebel States," passed on the 2d day of March, 1867, and an act supplementary thereto, passed on the 23rd day of March, 1867,

at an election to be conducted according to the provisions of the said acts of Congress.

* * *

## 5. FLORIDA CONSTITUTION OF 1867 TRANSMITTED TO THE PRESIDENT AND BY HIM TO CONGRESS

**(House Miscellaneous Document No. 297, 2nd Session, 40th Congress)**

FLORIDA

MESSAGE

from the

PRESIDENT OF THE UNITED STATES,

Transmitting

**Papers relating to proceedings in the State of Florida.**

May 29, 1868.—Referred to the Committee on Reconstruction and ordered to be printed.

**To the Senate and House of Representatives:**

I transmit to Congress the accompanying documents, which are the only papers that have been submitted to me, relating to the proceedings to which they refer in the State of Florida.

ANDREW JOHNSON.

Washington, D. C., **May 27,** 1868.

Washington, D. C., **May 27,** 1868.

Sir: In compliance with a provision of an act of the United States Congress, entitled "An act supplementary to an act to provide a more efficient government in the rebel States," I have the honor, as president of the constitutional convention of the State of Florida, herewith to transmit to you a copy of the constitution framed and adopted by the convention, and ratified by the people of Florida as a duly authorized election held on the 4th, 5th, and 6th instant.

I am, sir, with great respect, your obedient servant,

HORATIO JENKINS, Jr.,

**President of the Constitutional Convention, State of Florida.**

His Excellency ANDREW JOHNSON,
**President of the United States.**

## CONSTITUTION OF THE STATE OF FLORIDA.

### Preamble.

We, the people of the State of Florida, grateful to Almighty God for our freedom, in order to secure its blessings and form a more perfect government, insuring domestic tranquillity, maintaining public order, perpetuating liberty

and guaranteeing equal civil and political rights to all, do establish this constitution.

* * *

## ARTICLE I.

### Boundaries.

The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; from thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida reefs to and including the Tortugas islands; thence northeastwardly to a point three leagues from the main land; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning.

* * *

Done in open convention. In witness whereof, we, the undersigned delegates, representing the people of Florida, in convention assembled, do hereunto affix our names this the twenty-

fifth day of February, anno Domini one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second, and the secretary doth countersign the same.

HORATIO JENKINS, Jr., President.
S. CONANT, Secretary.

Countersigned by—

| | |
|---|---|
| George J. Alden. | Roland T. Rombauer. |
| Lyman W. Rowley. | Major Johnson. |
| J. W. Butler. | William R. Cone. |
| John L. Campbell. | Thomas Urquhart. |
| W. J. Purman. | Andrew Shuler. |
| L. C. Armistead. | J. N. Krimminger. |
| E. Fortune. | William K. Cessna. |
| H. Bryan. | Josiah T. Walls. |
| M. L. Stearns. | S. B. Conover. |
| J. E. A. Davidson. | Auburn Erwin. |
| Frederick Hill. | B. McRae. |
| J. W. Childs. | A. B. Hart. |
| T. W. Osborn. | N. C. Dennett. |
| Joseph E. Oats. | William Bradwell. |
| Richard Wells. | J. C. Gibbs. |
| Green Davidson. | J. H. Goss. |
| O. B. Armstrong. | A. Chandler. |
| John Wyatt. | W. Rogers. |
| John W. Powell. | Samuel J. Pearce. |
| Robert Meacham. | C. R. Mobley. |
| Anthony Mills. | David Mizelle. |
| A. G. Bass. | E. L. Ware. |

I, Sherman Conant, secretary of the said convention, do hereby certify that the foregoing

is a true copy of the constitution adopted on the 25th day of February, A. D. 1868.

SHERMAN CONANT, Secretary.

## 6. FLORIDA CONSTITUTION OF 1868 TRANSMITTED TO THE RECONSTRUCTION COMMITTEE OF CONGRESS

**(House Miscellaneous Document No. 114, 2nd Session, 40th Congress)**

PROCEEDINGS

of

THE FLORIDA CONVENTION

March 31, 1868.—Ordered to be printed.

Sir: In accordance with the following resolution adopted by the Constitutional Convention of the State of Florida, to wit:

**Resolved,** That the financial agent of this convention, William H. Gleason, and George J. Alden, a delegate to this convention, be directed to lay the journal of this convention and the constitution before the Reconstruction Committee of the United States Congress, and before Major General Meade, at as early a day as possible—

we present to your honorable committee the constitution as framed and adopted by the convention.

# CONSTITUTION OF THE STATE OF FLORIDA

## Preamble.

We, the people of the State of Florida, grateful to Almighty God for our freedom, in order to secure its blessings and form a more perfect government, insuring domestic tranquility, maintaining public order, perpetuating liberty, and guaranteeing equal civil and political rights to all, do establish this constitution.

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## ARTICLE I.

### Boundaries.

The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the River Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama on the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; from thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf stream; thence southwestwardly along the edge of the Gulf stream and Florida reefs to and including the Tortugas islands; thence northeastwardly to a point three leagues from the main land; thence northwestwardly three

leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning.

Done in open convention. In witness whereof we, the undersigned, delegates representing the people of Florida in convention assembled, do hereunto affix our names this the twenty-fifth day of February, Anno Domini one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second, and the secretary doth countersign the same.

HORATIO JENKINS, Jr., F.O.
**President.**

Countersigned by S. CONANT, **Secretary.**

George J. Alden, F.O.
Lyman W. Rowley, F.O.
—J. W. Butler,
—John L. Campbell,
W. J. Purman, F.O.
L. C. Armistead,
E. Fortune, N
H. Bryan, N
M. L. Stearns, Northerner.
J. E. A. Davidson,
Frederick Hill, N
J. W. Childs, F.O.
T. W. Osborn, F.O.
Joseph E. Oates, N
Richard Wells, N
Green Davidson, N
O. B. Armstrong, N
John Wyatt, N
John W. Powell, F.O.
Robert Meacham, N
Roland T. Rombauer, F.O.
Major Johnson, N
William R. Cone, C
Thomas Urquhart, N
Andrew Shuler, ?
J. N. Krimminger, C
Wm. K. Cessna, F.O.
Josiah T. Walls, N
S. B. Conover, F.O.
Auburn Erwin, N(?) F.O.
—M. McRae,
—O. B. Hart,
N. C. Dennett, F.O.
William Bradwell, N
J. C. Gibbs, N
J. H. Goss, C
A. Chandler, N
—W. Rogers,
Samuel J. Pearce, F.O.
—C. R. Mobley,

Anthony Mills, N —David Mizell,
—A. G. Bass, —E. L. Ware.

NOTE: The copy of the state constitution of 1868 transmitted to the Reconstruction Committee of Congress, referred to in the above letter from Wm. H. Gleason and George J. Alder, is the same as the one transmitted to the President and by him transmitted to the Senate and House of Representatives on May 27, 1868.

## 7. DRAFTS OF PROPOSED STATE CONSTITUTIONS

In addition to the copies of the state constitution, adopted by the constitutional convention, approved by the people of Florida, and submitted to the President and to Congress as aforesaid (Miscellaneous Documents 114 and 297, 2nd Session, 40th Congress) there were two other copies of proposed state constitutions also submitted, as is evidenced by Miscellaneous Document 109 of the said 2nd Session of the 40th Congress, to-wit:

### CONSTITUTION OF FLORIDA.

March 23, 1868.—Referred to the Committee on Reconstruction and ordered to be printed.

FLORIDA CONSTITUTIONAL CONVENTION —ITS HISTORY

Enclosed is the order of Major General John Pope, commanding third military district, calling the constitutional convention of Florida, and his return of the delegates elected.

## ARTICLE XII.

### Boundaries.

SECTION I. The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the river Perdido: from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama and the thirty-first degree of north latitude; then due east to the Chattahoochee river; then down the middle of said river to its confluence with the Flint river; from thence direct to the head of the Saint Mary's river; thence down the middle of said river to the Atlantic ocean; thence southwardly to the Gulf of Florida and Gulf of Mexico; thence northwardly and westwardly, including all islands within five leagues of this, to the beginning.

* * *

Your memorialists pray that Congress may, in its wisdom and in view of all the facts set forth above, find that the constitution formed by the twenty-two delegates who remained and completed their work before the convention was broken up is the only one that should be submitted to the voters of that State for ratification.

D. RICHARDS
W. U. SAUNDERS.

This is the constitution formed before the convention was broken up and a new convention organized:

# CONSTITUTION OF FLORIDA, 1868.

We, the people of the State of Florida, by our delegates in convention assembled, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the pursuit of happiness, do mutually agree, each with the other, to form the following constitution and form of government, in and for the said State:

Done in open convention. In witness, the undersigned, the President of said convention and delegates present, representing the people of Florida, do hereby sign our names, this the eighth day of February, anno Domini eighteen hundred and sixty-eight, and of the independence of the United States the ninety-third year; and the secretary of the convention doth countersign the same.

D. RICHARDS, President.

A. G. Bass,
William Bradwell,
Andrew Shuler,
Green Davidson,
Fred Hill,
John N. Krimminger,
Joseph E. Oates,
Charles H. Pearce,
John Wyatt,
Josiah Twalls,
Wm. U. Saunders,
Liberty Billings,
Wm. R. Cone,
Jesse H. Goss,
Jonathan C. Gibbs,
Major Johnson,
R. Meacham,
Anthony Mills,
Alexander Chandler,
Eldridge L. Ware,
O. B. Armstrong.

* * *

## LAST CONSTITUTION FRAMED AFTER A NEW CONVENTION WAS ORGANIZED.

*Constitution of the State of Florida, framed by a convention of the people assembled at Tallahassee, on the 20th day of January, 1868.*

### Preamble.

We, the people of the State of Florida, grateful to Almighty God for our freedom, in order to secure its blessings and form a more perfect government, insuring domestic tranquility, maintaining public order, perpetuating liberty, and guaranteeing equal civil and political rights to all, do establish this constitution.

### ARTICLE II

### Boundaries

The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the River Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama on the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; from thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf stream; thence southwestwardly along the edge of the Gulf stream and Florida reefs to and including the Tortugas islands; thence northwestwardly to a point five leagues from

the main land; thence northwestwardly five leagues from the shore, including all islands, to a point five leagues due south from the middle of the mouth of Perdido river; thence to the place of beginning.

NOTE: This constitution was never adopted by the convention nor was it ever adopted by the people of the state; it was merely proposed.

## 8 EXTRACTS FROM HOUSE REPORT NO. 215, OF THE FIRST SESSION OF THE 83rd CONGRESS, ON H. R. 4198, THE SAME BEING THE SUBMERGED LANDS ACT

**House Report No. 215**
**(To accompany H. R. 4198, 83rd Congress, 1st Session)**

(1385)

The Committee on the Judiciary, to whom was referred the bill (H. R. 4198) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources and the resources of the outer Continental Shelf, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

* * *

(1387)

H. R. 4198 consists of three titles. Title I contains the definitions of various terms used in the bill. Title II deals with the rights and claims by the States to the lands and resources beneath navigable **waters within their historic boundaries and provides** for their development by the States. Title III (See Analysis of Title III, post) deals with the seabed and resources therein of the outer Continental Shelf beyond State boundaries and claim jurisdiction and control for the United States: It authorizes leasing by the Secretary of the Interior in accordance with certain specified terms and conditions.

* * *

(1388)

The term "boundaries" **includes the historic seaward boundaries of the States** in the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, or any of the **Great Lakes,** as they were upon entrance of the State into the Union or as has been or shall be approved by Congress or as extended or confirmed pursuant to section 4 of this bill.

* * *

(1390)

Title II authorizes and confirms the boundaries of coastal States to be 3 geographical miles distant from its coastline or the international boundary in the Great Lakes or any body of water traversed by such boundary. While it approves claims of States to so extend their

boundaries to that line, it provides further that section 4 of the act is not to prejudice the existence of any State's historic seaward boundary into the Atlantic or Pacific Oceans, or the Gulf of Mexico or any of the Great Lakes beyond these three miles if it was **so provided by any treaty of the United States, or any act of Congress, or the constitution or laws of a State prior to or when it entered the Union or has been or shall be approved by Congress.** (Emphasis added).

**9 EXTRACTS FROM SENATE REPORT NO. 133, OF THE FIRST SESSION OF THE 83rd CONGRESS, ON S. J. RES. 13 (SUBMERGED LANDS):**

(1474)

The Senate Committee on Interior and Insular Affairs, to whom was referred the resolution, Senate Joint Resolution 13, to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources, having considered the same, report favorably thereon. . . .

* * *

(1483)

Section 3(a) (1) provides that the rights of ownership of lands and natural resources beneath navigable waters within **the historic**

**boundaries of the respective States** are vested in and assigned to the States or persons holding thereunder on June 5, 1950 (the date of the Supreme Court decision in the Louisiana and Texas cases) as explained in part III, "purpose of bill." Under the terms of the measure of the lands confirmed in the States by Senate Joint Resolution 13 are (i) lands within State's boundaries which are above high-water mark and are covered by navigable, nontidal waters, (ii) lands between the high-water mark and a line 3 miles seaward from the coastline, except that in States whose boundary extended beyond that line when the State entered the Union, or whose boundary has been or may hereafter be so extended with the approval of Congress, the resolution covers lands between the high-water mark and that boundary and (iii) all filled in, made, or reclaimed lands formerly beneath navigable waters.

* * *

(1484-5)

The seaward boundary of each original coastal State is confirmed and approved as a line 3 geographical miles distant from its coast line. "Coastline" is defined as the line or ordinary low water or the line marking the seaward limit of inland waters. This provision stems from the fact that the Supreme Court decision in United States v. California has been thought by some persons to cast doubt on whether the boundary of various eastern seaboard States extends 3 miles seaward from their coastlines.

Congressional authority is given for any State admitted subsequent to the formation of the Union to extend its seaward boundary to a line 3 geographical miles distant from its coastline, or to the international boundary of the United States. Any such extension of a State's boundary is expressly without prejudice **to any claim a State may have that its boundary extends beyond that line.** It is also provided that this section is without prejudice to the existence of a State's boundary beyond the 3 mile limit, if it was so provided prior to or at the time such State entered the Union, or if it has been heretofore or is hereafter approved by Congress. (Emphasis added).

## 10 EXTRACTS FROM STATEMENT OF SENATOR SPESSARD L. HOLLAND, MADE FEBRUARY 16 AND 17, 1953, BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS REGARDING SUBMERGED LANDS LEGISLATION

**(pages 34, 38, 50 and 72, report of hearing).**

(34)

Senator Holland. This measure does not deal with any of the problems of that vast portion of the Continental Shelf — about nine-tenths of the whole shelf — which lies beyond the States' historic or constitutional boundaries.

Mr. Chairman, if I may digress from my printed statement, I call attention to the fact that the map prepared by the Library of Con-

gress for the presiding officer covers the entire Continental Shelf adjoining the maritime States, and I want to make it very clear that my bill does not apply to that entire area shown in blue upon the map, but it applies instead to only 3 miles in area lying off all States but two, and in the case of Texas applies to 3 leagues, or nearly 10½ miles, **and in the case of Florida has two different applications, 3 miles all down our Atlantic coastline and around the Straits of Florida and back to the mainland, and 3 leagues or nearly 10½ miles for the rest of Florida.**

By way of explanation at this time, the reason there is this difference in the case of the coastline of Texas and a portion of the coastline of Florida is that the constitutions of those two States include the provisions that **the limits of those States appear 3 leagues out,** as I have stated in my statement; that is, over the entire coastline of Texas **and over a portion, something more than a third of the coastline of Florida.**

Senator Millikin. I would like to ask the witness—it is not necessary to your case to go into all of the Continental Shelf problems, and I assume that you are not trying, by what you say, either to exclude or include possible future debate on the Continental Shelf? Is that correct?

Senator Holland. That is correct, and I think that the two cases are so different that they merit and must have different considerations.

I fully realize that questions concerning this outer belt must be settled by Congress, but I am opposed to the inclusion of that matter in Senate Joint Resolution 13. The consideration of the outer belt raises entirely different and more difficult questions than those which will be solved by passage of the joint resolution which is before you today.

The questions presented by Senate Joint Resolution 13 have been fully considered by Congress several times, and I believe that this legislation, which relates solely to property within the States' boundaries, can be speedily passed if left unencumbered by other problems. It will be noted that this bill relates to offshore lands beyond the 3-mile limit in only two cases, the west coast of Florida and the coast of Texas, both of which States have, under their constitutions, boundaries extending 3 leagues into the Gulf of Mexico. Otherwise, as to offshore lands, the bill is confined to those lands which extend out to the 3-mile limit. It gives to those States whose boundaries do not formally extend this distance the opportunity to so extend them.

* * *

(38)

Mr. Chairman, when I prepared this statement I did not know that the presiding officer was going to insert that specific list, and so I withdrew my request for inserting the list

again at this time, which would have been exhibit 6.

As mentioned before, there are 40 cosponsors of this legislation, and we find our support coming from every section of the country and including many nationwide organizations whose dignity and patriotism cannot be questioned. To conserve the time of this committee, I would like to insert as part of my remarks a partial list of these supporting organizations.

* * *

(50)

Senator Daniel. Your bill, as a matter of fact, uses the boundaries "at the time said State entered the Union"; is that not correct?

Senator Holland. Entered the Union, or there are some alternatives in there. In the event a constitution was adopted and stated boundaries in a constitution were approved by the Congress, that would prevail. In the event there is not any constitutional boundary, it is specifically stated and the bill makes it clear that 3 miles is what we are talking about.

The bill also makes it clear that it is 3 geographic miles that we are talking about. Some of the States speak of 3 statute miles or 3 English miles, which would be 3 land miles, and we think that the application of the unit of measurement under this bill should uniformly apply to all States, so we have used the term

"3 geographic miles," and I would like the record to show that that is 3.45 land miles, **which would apply in every place to all States except as to the 2 States,** 1 of which, Texas, has a 3-league limitation in its own constitution, extending all across that State's front on the Gulf; **and the State of Florida, which has a 3-league limitation extending over a portion, something more than a third of its frontage, being frontage on the Gulf of Mexico.**

Senator Anderson. I thank the Senator for it. I am not trying to quibble with him over what his bill involves; and I do know that occasionally, when courts are called upon to construe laws, they look to the legislative intent; and I thought that right at the beginning of this hearing it was important that the author of the bill set forth what the legislative intent is—that it does not include this fringe of islands 50 or 60 miles from shore but does deal with the 3 miles directly coming out from the shoreline.

* * *

(72)

In this instance I simply call attention to the fact that we are dealing, under my bill at least, with a narrow, strangling cord of land and water, generally 3 miles wide, never more than 10½ miles wide, 5,000 miles long, extending from the upper border of Maine clear down the Atlantic coast, back through the gulf, and then up the Pacific, which must become either a part of the States upon which it bounds and the

coastal communities which it must serve. (Emphasis added)

**EXTRACTS FROM STATEMENT OF HON. FRANK G. MILLARD, ATTORNEY GENERAL OF MICHIGAN MADE FEBRUARY 17, 1953, BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS REGARDING SUBMERGED LANDS LEGISLATION (Page 206, report of hearing).**

The Holland bill simply recognizes the long-established good-faith claims of all of the 48 States and establishes, confirms, and restores to every State in the Union the ownership and control of all of this type of property located within their respective historic boundaries. It will not be a "gift," because the Federal Government has never possessed or exercised any ownership of the property. It asserted no claim until recent years. The Holland bill will simply permit the States to keep that which they have always possessed in utmost good faith for over 100 years.

**EXTRACTS FROM STATEMENT OF HON. PRICE DANIEL, SENATOR FROM TEXAS, MADE FEBRUARY 23, 1953, BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS REGARDING SUBMERGED LAND LEGISLATION (page 411, report of hearing).**

Senator Daniel. In order that it might immediately follow that, I would like to intro-

duce into the record this map from the State Department of the International Boundary Commission, which I showed to the committee at one of the previous meetings, but did not put in the record, which shows that the International Boundary Commission between the United States and Mexico actually ran our international boundary between these two nations 3 leagues out into the Gulf of Mexico, in accordance with the Treaty of Guadalupe Hidalgo.

I may say the Republic of Mexico is claiming the same distance out into the Gulf as the State of Texas and **the State of Florida, with approval by the United States Congress.**

The matter of 9 miles or 10½ miles all depends upon whether you are talking about geographic miles or statutory miles, I believe it is. Anyway, we are claiming the same distance; actually 3 leagues is equal to 10½ statutory miles.

I just want that to be in the record so that our friends from Mexico will not be looked upon as thieves and robbers when they are trying to claim exactly what the International Boundary Commission, according to this State Department map, said they had the right to claim as their boundary out in the Gulf of Mexico.

Senator Barrett. It may be received.

(Emphasis added)

## 11 EXTRACT FROM PAGE 931 OF REPORT OF HEARING BEFORE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS OF THE SENATE; MARCH 2, 1953

Senator Anderson. I grant you that it eliminates future controversies temporarily. Any State can go back afterward and say a mistake was made in drawing its historic boundaries, and we would have the same controversy over again.

When the Secretary of the Interior was testifying before us he was asked: "I wonder if you can supply for the committee a definition of the historic boundaries of the respective States. I am not asking you to do it now. I mean a little later on when you have had an opportunity to go into the matter. The historic boundaries get to be quite a problem after a while. I am wondering if you could supply the committee with a statement of your idea of the historic boundaries of the respective States."

The Secretary of the Interior said: "I think the Attorney General's idea would probably be more accurate than the Secretary of the Interior, but I will be glad to supply it."

Since he has qualified you as the witness he would like to have testify on this, can you give us any idea whether you would follow for example, the Boggs formula?

Attorney General Brownell. Our thought

generally, Senator, without going into great detail, is that this line would be 3 miles out, except in the case of Texas and the west coast of Florida.

**12 EXTRACTS FROM STATEMENT OF HON. DOUGLAS McKAY, SECRETARY OF THE INTERIOR, BEFORE SUBCOMMITTEE NO. 1 OF THE COMMITTEE ON THE JUDICIARY, OF FEBRUARY 26, 1953. (Serial No. 1 printed for use of the Committee on the Judiciary H. R. 2948 and similar Bills; pages 179, 180, 181, 188 and 196)**

STATEMENT OF THE HON. DOUGLAS McKAY, SECRETARY OF THE INTERIOR

Secretary McKay. Mr. Chairman and gentlemen of the committee, Congress has before it a fundamental question of national policy involving the ownership of, and the production of minerals from the offshore submerged lands of the United States.

This has been a controversial problem for a number of years.

The Supreme Court of the United States, in litigation involving the States of California, Texas, and Louisiana, has held that the Federal Government has a paramount interest in all of the Continental Shelf. It now becomes desirable for the Congress to determine as a matter of policy rather than as a matter of law whether the exercise of continued Federal control in this area is in the best national interest.

I am not here to interpret the decision of the Supreme Court. The Court did, however, recognize in its opinion the right of Congress to establish a national policy.

We know the vital role played by oil and gas in our national economy. We are aware of the essential place petroleum has in the implementation of the Military Establishment.

The amounts of oil which may be needed by our country at any given time in our history will of necessity depend to a large part upon the problems involving our national defense. It would seem to me, however, fundamental that the petroleum to be utilized for military or civilian purposes should be thought of in terms of productible oil at a given time, rather than petroleum stores established as a reserve by limited drilling or geophysical exploration.

In other words, with respect to the oil down under the soil that we have just explored and know is there, you cannot turn on a spigot and turn it off. You have to have productive wells to be of value at the moment.

In view of the broad national policy which this Congress must establish, and in the light of the concept of petroleum utilization which I have just expressed, I am pleased to give to the committee my own opinion of the problems before it.

I should like to be very clear in saying that

I am not the advocate or the opponent of any specific bill which the committee may have under consideration.

I do believe that the national interest would be best served by restoring to the various States the coastal offshore lands to the limits of the line marked by the historical boundaries of each of the respective States.

I believe that the national defense will be best served by getting more active production from these submerged lands; and that it is equally important, therefore, that the Congress should in the same legislation establish a procedure by which development may go forward on all of the lands on the Continental Shelf outside of a line marking the historical boundaries of the several States, with all of the revenues to go to the Nation as a whole.

I believe that the interest of the Federal Government should be asserted and advanced by the Congress in all of the Continental Shelf which lies outside of the line marking the historical boundaries of the States.

Due consideration should be given to problems of international sovereignty involving the utilization of the territorial waters and the high seas which lie above the Continental Shelf.

I should like now to address myself to the administration for purposes of production and development of that portion of the Continental

Shelf which lies outside the line marking the historical boundaries of the various States.

I believe that such administrative responsibility would rest most appropriately in the Department of the Interior. I am motivated in this conclusion by the traditional experiences of the Department, with particular respect to the Geological Survey, the Bureau of Land Management, and like agencies which have long been concerned with the conservation and development of the public resources of our Nation.

The legislation should, in my judgment, empower the Department of the Interior, or such other department or agency as the President may designate, to take appropriate action to prevent waste, to provide for exploration and development, to supervise production, and to recover fair and just revenues for the benefit of the Nation as a whole.

Because of always changing conditions, some of which are unforeseeable, I would hope that the legislation would grant such discretion to the Department of the Interior in management policies as is consistent with the thinking of the Congress.

Various leases to companies and to individuals are currently existent on lands of the Continental Shelf both within and without the line marking the historical boundaries of the several States. In keeping with the American tra-

dition of recognizing the ownership of properties acquired in good faith, I do believe that the legislation should empower the Federal Government to grant new leases in exchange for State-issued leases on properties outside the line marking the historical boundaries of the States.

The legislation should as clearly as possible define with exactness the line marking the hostorical boundaries of the various States, but some mechanism should be provided in order to settle disputes which may arise with respect to the location of individually leased properties.

It is my hope that this important problem of national policy may be resolved as expeditiously as possible.

Mr. Graham. Have you completed your statement?

Secretary McKay. Yes, sir.

Mr. Graham. Mr. Secretary, before we proceed further, for your information, the group about me are the members of Subcommittee No. 1 assigned to hear this matter. We have invited other members of the Committee of the Judiciary to be present. In addition, there are several other Members of Congress who are not members of the committee. Guided by the time you have, we would like to permit those of the committee to interrogate you, and then the other members of the committee to interrogate you;

and, then, if you have time, the other Members of Congress may desire to interrogate you. Then you will know by whom you are being questioned.

Secretary McKay. Yes, sir. My time is yours. I will be glad to stay whatever time you wish.

Mr. Graham. Mr. Hillings?

Mr. Hillings. I have no questions.

Mr. Graham. Miss Thompson?

Miss Thompson. I have none.

Mr. Graham. Mr. Celler, have you any questions?

Mr. Celler. Yes; I have a few questions.

Mr. Secretary, I believe your statement, if I may be privileged to sum it up, says that the right of disposal lies in the Federal Government concerning the land submerged under the sea seaward from the limitation of the State boundaries; is that correct?

Secretary McKay. Yes, sir, **of the historic boundaries. In most cases of these States, it is 3 miles to sea, except in Texas and Florida, where it is, of course, 3 leagues.**

* * *

(188-9)

Mr. Wilson. I was speaking particularly with regard to outside the State boundaries of 10½ miles of Texas and Florida, and 3 miles for the rest of the States. Historical boundaries are what we are talking about. I say outside the historical boundaries.

Mr. Celler. Would it not be more consistent with what you just said that instead of using the term "historical boundaries," you would use the boundaries as claimed by the States?

Secretary McKay. No, I cannot agree with that. The historical boundaries have been established for 100 years or more, from the time the State came into the Nation.

Mr. Celler. Then you are limiting the claim of the States to historic boundaries that have existed over the years?

Secretary McKay. I have not made any statement on the claims of the States.

Mr. Celler. What do you mean by historic boundaries? That is what I am trying to get at.

Secretary McKay. The historic boundaries have been recognized by the States, in the case of my State for 94 years, when we came into the Union with the description that we came in with. With Texas, they came in by a treaty as a Republic. Those are historic boundaries.

I do not think there is any question about that.

(Emphasis added)

## 13 EXTRACTS FROM THE CONGRESSIONAL GLOBE

### March 2, 1867, page 1969-1972; Veto Message

President Andrew Johnson, in his veto message to H. R. No. 1143 (misnumbered 1134), which was passed over his veto and became the act of March 2, 1867 (14 Statutes at Large 428), said, concerning the fifth section thereof, that

> "The fifth section declares that the preceding sections shall cease to operate in any state where certain events shall have happened. These events are . . .; **fifth,** the submission of the state constitution to Congress for examination and approval of it by that body. . . . Another Congress must first approve the constitutions made in conformity with the will of this Congress, and must declare these states entitled to representation in both houses. . . ."

### March 23, 1868; page 2073, Congressional Globe.

### "FLORIDA"

"Mr. Farnsworth, by unanimous consent, presented the memorial of the meeting of the Florida constitutional convention, transmitting two constitutions, and moved that they be referred to the Committee on Reconstruction, and ordered to be printed.

"The motion was agreed to."

**March 31, 1868, page 2232, Congressional Globe.**

**"CONSTITUTION OF FLORIDA"**

"Mr. Paine. I move that the constitution of Florida with the accompanying papers, referred to the Committee on Reconstruction, be printed for the use of the House.

"The motion was agreed to."

**May 13, 1868, page 2434, Congressional Globe.**

**"CONSTITUTIONS OF SOUTH CAROLINA, ETC."**

"The PRESIDENT pro tempore laid before the Senate the constitution of the State of South Carolina, and also the constitution of the State of Florida, adopted by the constitutional conventions recently held in those States under the reconstruction laws; which were referred to the Committee on the Judiciary."

**May 13, 1868, page 2436, Congressional Globe.**

**BILLS INTRODUCED**

"Mr. Wilson asked, and by unanimous consent obtained leave to introduce a joint resolution (S. R. No. 135) to restore Alabama, North Carolina, South Carolina, Georgia, Louisiana, and Florida to representation in Congress; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed."

**May 14, 1868, pages 2461-2463, Congressional Globe.**

Mr. Pruyn . . . But, sir, the views were boldly carried out and we have the result now before us as far as it has been reached in this direction in the shape of these constitutions now presented for our approval.

* * *

(2462)

Mr. BINGHAM. Well, no matter. The constitutions of these several States, in accordance with the spirit and letter of the Constitution of the United States as it stands amended by the act of the American people, secure equal political and civil rights and equal privileges to all citizens of the United States, native born and naturalized. Time was in this Republic when that was Democracy. If the utterance of Jefferson ever meant anything—and I think it signified a great deal—it meant precisely that when he declared for equal and exact justice to all men; equality of rights to all. That is all I desire to say on that subject.

* * *

(2463)

Mr. WOODBRIDGE. Mr. Speaker, in the act passed at the last session for the government of the rebel States it was provided that any of those States, under certain conditions, might call a convention, which should have power to frame a constitution and civil government

under the provisions of the act of Congress; that the constitution, when formed, should be submitted to the people of the State for their ratification, and that if the majority of the registered voters declared in favor of the constitution, and that constitution, when submitted to Congress, **should be approved by it,** the State should then be admitted to representation. . . . (Emphasis added)

**May 14, 1868, page 2465, Congressional Globe.**

Now, sir, what is the particular question we are considering? Five or six States have had submitted to them the question of forming constitutions for their own government. They have voluntarily formed such constitutions, under the direction of the Government of the United States. They have sent those constitutions here, backed, in every instance, even in that of Alabama, by a majority of all the voters within the State. And when I say "all the voters" I mean all the voters, black and white, whether they come from New York or South Carolina or elsewhere. They have sent us their constitutions. Those constitutions have been printed and laid before us. We have looked at them; **we have pronounced them republican in form;** and all we propose to require is that they shall remain so forever. Subject to this requirement, we are willing to admit them into the Union. (Emphasis added)

* * *

**May 29, 1868, page 2659, Congressional Globe.**

**EXECUTIVE COMMUNICATION**

"The PRESIDENT pro tempore laid before the Senate a message of the President of the United States, communicating papers which have been submitted to him relating to the proceedings for the formation of a constitution in the State of Florida under the reconstruction acts; which was laid on the table, and ordered to be printed."

**June 2, 1868, page 2759, Congressional Globe.**

Mr. TRUMBULL. The Committee on the Judiciary, to whom was referred the bill (H. R. No. 1058) to admit the States of North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress, have instructed me to report it back with an amendment.

Mr. WILSON. What is the amendment?

Mr. TRUMBULL. It will have to be printed; and I have no time to explain it. The same committee, to whom were referred the constitutions of these States, report them back for the consideration of the Senate.

The same committee, to whom was referred the resolution (S. R. No. 135) to restore Alabama, North Carolina, South Carolina, Georgia, Louisiana, and Florida to representation in Congress, have instructed me to report it back and recommend its indefinite postponement,

the subject being embraced by the bill just reported.

The PRESIDENT pro tempore. The joint resolution will be indefinitely postponed if no objection be made, and the bill will go on the Calendar.

* * *

**June 5, 1868, page 2858, Congressional Globe.**

REPRESENTATION OF SOUTHERN STATES.

Mr. TRUMBULL. I move that the Senate now proceed to the consideration of the bill (H. R. No. 1058) to admit the States of North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The PRESIDENT pro tempore. The bill will be read through.

Mr. TRUMBULL. Perhaps I can save time by briefly stating to the Senate what the changes made in the House bill are. The bill as it came from the House of Representatives provides for the admission of the States of North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress. The committee have amended the bill so far as to strike out Alabama, and as the bill is printed, to insert Florida, but a majority of

the committee do not agree to the insertion of Florida; and that is a mistake. Florida should not be in the bill as the report of the committee, although, as one member of the committee, I was in favor of inserting Florida. A majority of the committee, however, are opposed to it, and, although printed in that form, Florida is not inserted by the majority of the committee. It arose out of a misunderstanding as to how the majority of the committee stood, the committee not being full at the time the vote was taken and Florida inserted.

* * *

These are the only four States that remain in the bill according to the report of the Judiciary Committee. I will state, however, in regard to Florida, what the evidence is of the ratification of the constitution in that State. While the bill was pending before the Judiciary Committee I addressed a note of the General of the Army asking for any official information in his possession in regard to the ratification of the constitution in Florida, and received this answer:

HEADQUARTERS ARMY OF THE UNITED STATES,
WASHINGTON, D. C., *June* 3, 1868.

SIR: Since my note of yesterday to you, I have received a telegram from General Meade, of which the accompanying is a copy, reporting the result of the Florida elections, and I send it to you in full answer to your inquiry.

Very respectfully, your obedient servant,

U. S. GRANT, *General.*

HON. LYMAN TRUMBULL, *United States Senator, Chairman Committee on Judiciary.*

[Telegram received in cipher 2:40 p. m.]

WASHINGTON, *June* 2, 1868.

(From Atlanta, Georgia.)

To General U. S. Grant,

*Commanding Armies of the United States:*

Official returns of the Florida elections, this day received, show for the constitution 14,511 votes; majority for the constitution 5,050 votes. In the office of Governor Harrison Reed received 14,421 votes; George W. Scott received 7,731 votes; and Samuel Walker received 2,257 votes.

GEORGE G. MEADE,
*Major General Commanding.*

HEADQUARTERS ARMY UNITED STATES.

Official copy:

GEORGE K. LEET,
*Assistant Adjutant General.*

* * *

REPRESENTATION OF SOUTHERN STATES.

The PRESIDENT **pro tempore.** House bill No. 1058 is before the Senate as in Committee of the Whole.

Mr. TRUMBULL. When interrupted, Mr. President, I had read a letter from General Meade stating the vote in Florida. The papers to which I have referred furnish the evidence of the ratification of the various constitutions.

**June 5, 1868, page 2662, Congressional Globe.**

I am in favor of the admission of this State. I want the Union restored as fast as possible. Let us get this State and Florida in, and we shall then have enough to stop all quibbling,

to satisfy all honest men and everybody else with regard to the ratification of the constitutional mendment. I suppose our Democratic friends want that question settled one way or the other. We want it settled in the right way.

**June 8, 1868, page 2930, Congressional Globe.**

The distinction between Alabama and the other States is to my mind very clear. The other States, Georgia, North Carolina, South Carolina, Louisiana, and Florida, have all adopted constitutions in accordance with the reconstruction acts and sent their constitutions here; they have ratified those constitutions by a vote of the people in accordance with the reconstruction acts. The State of Alabama has not done that.

**June 8, 1868, page 2931, Congressional Globe.**

We have a bill here embracing five States, North Carolina, South Carolina, Louisiana, Georgia, and Florida, each one of which has ratified its constitution in accordance with the law.

**June 10, 1868, page 3018, Congressional Globe.**

The Chief Clerk. It is proposed to amend the preamble by striking out "Alabama" in the second line and inserting "Florida," and by striking out the words "in form" after the word "republican" in the seventh line.

Mr. TRUMBULL. "Alabama" should not go out now.

Mr. DRAKE. And Florida should be inserted in the preamble. There are two amendments in the preamble. One is to insert the name of Florida there; and as it is now in the body of the bill, it should of course be inserted in the preamble. The other is to strike out the words "in form." Both of these amendments require the action of the Senate.

**June 11, 1868, page 3067, Congressional Globe.**

## MESSAGE FROM THE SENATE

At this point the committee rose informally, and the Speaker having resumed the chair, a message was received from the Senate, by Mr. Gorham, its Secretary, announcing that the Senate had passed bills and a joint resolution of the following titles, in which he was directed to ask the concurrence of the House:

* * *

A joint resolution (S. R. No. 93) granting permission to officers and soldiers to wear the badges of the corps in which they served during the rebellion.

The message further announced that the Senate had passed the bill (H. R. No. 1058) to admit the States of North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress, with amendments, in which the concurrence of the House was requested.

**June 12, 1868, pages 3090-3097, Congressional Globe.**

REPRESENTATION OF SOUTHERN STATES.

Mr. BINGHAM. I report back from the Committee on Reconstruction the amendments of the Senate to the bill (H. R. No. 1058) to admit the States of North Carolina, South Carolina Louisiana, Georgia, and Alabama to representation in Congress, with the recommendation that the amendments of the Senate be concurred in; and I call the previous question.

The amendments were read, as follows:

Page 1. line two of the preamble, strike out "and."

Page 1. line two, after the word "Alabama," insert "and Florida.".

Page 1. line eight, strike out the words "in form."

Strike out all after the enacting clause and insert in lieu thereof the following:

Whereas the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of an act entitled "An act for the more efficient government of the rebel States," passed March 2, 1867, and the acts supplementary thereto, framed constitutions of State government which are republican, and have adopted such constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,

*Be it enacted, &c.*, That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida shall be entitled and admitted to representation in Congress as a State of the Union when the Legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the

Thirty-Ninth Congress, and known as article fourteen, upon the following fundamental conditions: that the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State who are entitled to vote by the constitution thereof herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted, under laws equally applicable to all the inhabitants of said States: *Provided*, That any alteration of said constitutions may be made with regard to the time and place of residence of voters; and the State of Georgia shall only be entitled and admitted to representation upon this further fundamental condition: that the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision, shall be null and void, and that the General Assembly of said State, by solemn public act, shall declare the assent of the State to the foregoing fundamental condition.

* * *

(3090)

Mr. FARNSWORTH. I move to strike out all of this bill that relates to the admission of Representatives in Congress from Florida. And in support of my amendment I desire to say that I make it, as I think the House will believe from my past course in regard to reconstruction, because I am thoroughly convinced that Florida ought not to be readmitted to representation in Congress with its present constitution.

In the first place, the constitution of Florida was irregularly formed; I can but briefly go over the history of its formation. It seems that a majority of the delegates elected to the Flor-

ida convention assembled at the time appointed; they were sworn, organized the convention, elected its officers, and proceeded with the business of the convention for a week or so. In the meantime the minority of the convention, refusing to go into the convention, by constant efforts to withdraw members from the convention succeeded in getting enough to withdraw to leave the convention without a quorum.

The convention, however, assembled from day to day and proceeded, as far as it could without a quorum, in the details of a constitution, and finally adjourned for a week, in order that other members of the convention might come in and that they might submit what they had done to General Meade. Before the expiration of the week, and on Saturday night, I think it was, the minority, who had adjourned to some neighboring village, came in, in the night, broke into the hall, and took possession of it and held it. On the day when the convention was to reassemble they found this minority in possession of the hall, with bayonets at the door to keep them out.

This minority convention, finding that they had not a majority to proceed to business, proceeded first to expel four members of the convention, to vote them out and to vote in the minority candidates, who had no certificates of election, and who in some instances confessedly had but a most meager minority of the votes cast. Acting upon the principle that as they

had voted out the men who were elected somebody ought to represent those districts, they voted in the men who were not elected.

Then they proceeded with the work of making a constitution. After they had completed their labors, in order to get the delegates of the convention to sign it they passed an ordinance providing that no member should receive his pay as delegate to that convention unless he signed the constitution. Many of the members of the convention were very poor men, many of them were colored men, depending entirely upon the pay they should receive as delegates in order to defray their expenses. Of course, they walked up and signed the constitution for the purpose of obtaining money to defray their expenses and pay their debts. By this means they succeeded in getting a majority of the delegates elected to the convention to sign the constitution.

Now, what is the constitution of Florida? It erects a little oligarchy down there in Florida; nothing else in the world. It gives to the Governor-elect of that State the power to appoint nearly all the State officers. And, by the way, the man elected Governor of Florida is one of the Postmaster General's mail agents in Florida. And the man elected Lieutenant Governor is, I believe, from the pineries of Wisconsin, where the Barston frauds were got up; and I do not know but what he is another of the post office agents.

The Governor of Florida is authorized by this constitution to appoint all the other State officers, the attorney general, secretary of State, State treasurer, State auditor, superintendent of schools, and all such officers. These State officers are made a sort of staff to the Governor; they are his counsel, and are authorized by the constitution to advise him as to the constitutionality of any law, and as to the proper construction to be given to any provision of the State constitution. And the Governor, taking the advice of the creatures he himself appoints, may set aside any law passed by the Legislature of that State.

Not only that, the Governor of Florida is to appoint all the judges of the State — the supreme court judges and the circuit court judges. Not only that, but the salaries of these judges are fixed very high. They have more circuit judges in the little State of Florida than they had in the great State of Illinois when I first went there, with salaries of from three to four thousand dollars each, while in my State, at this time, judges get $1,000 salary with some petty fees. The supreme judges of Florida are to get $4,000 a year each, all being appointed by the Governor. More than that, the Governor appoints the sheriffs and justices of the peace for the whole State. Every sheriff and justice of the peace of the State of Florida is to hold his office at the beck and nod of Governor Reed, the postal agent of the Postmaster General. Who these various officers are to be I do not

know; we shall probably find out when we admit the State.

Mr. CULLOM. I desire to ask my colleague whether this constitution, with all the provisions to which he refers, was not submitted to the people and adopted by them?

Mr. FARNSWORTH. I was coming to that. I am aware that the argument will be made that this constitution, with all its provisions, was submitted to the people. So it was, and with all the Federal office-holders of that State in favor of it. They say it was adopted by the loyal votes of Florida. On the contrary, loyal men in Florida say that it was adopted by the rebel votes; for, mark you, this constitution provides that every man in Florida shall vote. Nobody is excluded from the right of suffrage under this constitution. Though a man be covered all over, from the crown of his head to the sole of his foot, with the sin of rebellion and the blood of our slaughtered soldiers, he can vote under this constitution.

There are many other things of which, if I had time, I would like to speak. I might refer to the apportionment of representatives. By this constitution representatives in the Legislature of Florida are apportioned in such a manner as to give to the sparsely-populated portions of the State the control of the Legislature. The sparsely-populated parts of the State are those where there are very few negroes, the parts

inhabited by the white rebels, the men who, coming in from Georgia, Alabama, and other States, control the fortunes of their several counties. By this constitution every county in that State is entitled to a representative. There are in that State counties that have not thirty registered voters; yet, under this constitution, every one of those counties is entitled to a representative in the Legislature; while the populous counties are entitled to only one representative each, with an additional representative for every thousand inhabitants.

I say to this House that there never was such a constitution framed by any State of this Union as that which has been framed by this so-called State of Florida. In my opinion, it will be wise, very wise for this House to reject the State of Florida until she shall come here with cleaner hands than she now presents.

Mr. Speaker, I do not desire to say anything further upon this question.

Mr. PAINE. Will the gentleman from Ohio (Mr. Bingham) yield the floor to me?

Mr. BINGHAM. How long a time does the gentleman desire?

Mr. PAINE. Ten minutes.

Mr. BINGHAM. Oh, yes.

Mr. PAINE. Mr. Speaker, it is not without

great reluctance and real pain that I find myself compelled to oppose that portion of the report of the committee which favors the inclusion of Florida in this bill. I would be strongly in favor of concurring in the amendments of the Senate with an amendment striking out Florida. The government of that State is to a considerable extent in the hands, and I understand is destined to be in the hands, of citizens of my own State, of some of whom I am the warm personal friend, and hence it affords me deep regret to be compelled, in the interest of what I believe to be justice and fair play, to oppose the inclusion of Florida in this bill.

As the bill passed this House it did not include that State. Florida has been ingrafted upon our bill by the Senate; and I rise now to oppose the Senate substitute so far as Florida is concerned, and to give to the House, as I am bound to, my reasons for opposing it. I can do no less than this, because it has been my duty as a member of the committee to scrutinize this constitution. I ought to explain to the House its character. After I have done that it will be for each member to decide himself whether he will or will not vote for concurrence.

Now, sir, in 1860 the census gave Florida a population of 140,425. Florida is inferior in wealth, and, I believe, in numbers, to the average congressional districts of the United States. I have no idea that there is in the State of Florida this day one half, if, indeed, there is one

third, of the wealth or the ability to bear the burdens of taxation that is to be found in the average congressional districts of the United States. At the last election 24,319 votes were cast. The number of registered voters was 28,003. This differs but little from the vote cast in the several congressional districts of the United States. I have a copy of the constitution of Florida in my hand, and from the provisions of that instrument relating to the appointment and election of the officers of the State I will show to the House what officers are appointed by the Governor with the consent of the Senate, what officers are appointed without the advice or consent of the Senate, and what officers are elected by the people, with the terms of each and their salaries, so far as they are fixed by the constitution. Of all the officers of that State the Governor, Lieutenant Governor, Legislature, and constables alone are elected by the people. The following officers are to be appointed by the Governor by and with the advice and consent of the Senate: one chief justice for life, with a salary of $4,500; two associate justices for life, at a salary of $4,000; seven circuit judges for eight years, with salaries to be fixed by the Legislature; thirty-nine county judges for four years, with salaries to be fixed by the Legislature; seven State attorneys for four years, with salaries to be fixed by the Legislature; thirty-nine sheriffs for four years, with salaries to be fixed by the Legislature; thirty-nine circuit court clerks for four years, with salaries to be fixed by the Legislature; one sec-

retary of State for four years at a salary of $4,000; one attorney general for four years, with a salary of $3,000; one comptroller for four years, at a salary of $3,000; one treasurer for four years, at a salary of $3,000; one surveyor general for four years, at a salary of $3,000; one superintendent of public instruction for four years, at a salary of $3,000; one adjutant general for four years, at a salary of $3,000; one commissioner of immigration for four years, at a salary of $3,000; two major generals, term and salary not fixed; four brigadier generals, term and salary not fixed; all militia officers in the State; thirty-nine county assessors for two years, salaries to be fixed by the Legislature; thirty-nine county collectors of taxes for two years, with salaries to be fixed by the Legislature. All these officers are to be appointed for that insignificant State, probably inferior in population, and certainly inferior in wealth, to the average congressional districts of the country, by and with the advice and consent of the Senate, and all the salaries which I have indicated are fixed by the constitution.

I come now to the list of officers to be appointed without the consent of the Senate. They are thirty-nine county treasurers for two years; thirty-nine county surveyors for two years; thirty-nine county superintendents for common schools, each for two years; one hundred and ninety-five county commissioners, each for two years; and as many justices of peace as the Governor may see fit to appoint, each holding his

office for life, or at the pleasure of the Governor.

The Governor is chosen by the people for the term of four years, at a salary fixed by the constitution at $5,000. The Lieutenant Governor is chosen by the people for four years, with a salary fixed by the constitution at $2,500. Fifty-three representatives are chosen by the people, each for two years, at a salary of $500, fixed by the constitution, beside mileage. Twenty-four Senators are chosen by the people for four years, at $500 salary, fixed by the constitution, beside mileage; and constables are to be chosen by the people, one for every two hundred people. These are the officers to be elected by the people.

* * *

(3091)

Mr. BUTLER. Mr. Speaker, I have only the interest in the State of Florida that any other gentleman in the House has; and I only desire a few moments to relieve the provisions of this bill from the argument to prejudice which my friend has put before the House; for after all it is an argument to prejudice.

In the first place, let us examine the method of amending provided for by the constitution of Florida, which he thinks is highly improper and detrimental to the interests of a republican form of government. It is exactly the provision contained in the constitution of the State of Massachusetts; it is exactly the provision of

the constitution of the State of New Hampshire; and in Massachusetts we have five times amended our constitution when we have found it necessary. Besides, in New Hampshire it takes two thirds of the people, as my friend from New Hampshire suggests. The fact is that the good people of Florida have taken the old constitution of Massachusetts, New Hampshire, and Maine, and have ingrafted provisions suitable to their condition upon it, and made it their constitution; and the argument made here goes exactly to the constitutions made by our fathers in 1789, and so downward, under which we have lived and grown to man's estate, without being aware we were not living under a truly republican form of government.

* * *

(3092)

Mr. BUTLER. And which I did answer as well as I could.

I now desire to go a little further into this matter. General Meade went down there and sustained the convention. After that the constitution was submitted to the people, and the people ratified it by a majority almost two to one.

What was done next? The Legislature of that State got together and ratified the fourteenth constitutional amendment. On the 15th of this month that Legislature is to elect offi-

cers; and on the 16th United States Senators are to be elected.

* * *

(3092)

Now let me answer the statement of the gentleman from Illinois on my right, (Mr. Washburne.) He said he would remit Florida back to its territorial condition. Very well, gentlemen, if you will put all these southern States back into a territorial condition I will go with you. But if you are going to rehabilitate any of these States after their rebellion then serve all alike.

When Texas was admitted into the Union she was admitted with two members of Congress and twelve thousand voters. And it is now proposed by some gentlemen to cut up that State into two, three, or four States.

But time presses, and I must speak briefly on these different points. In the first place, this State organization of Florida has the approval of General Meade. In the next place, it has the approval of the Judiciary Committee of the Senate, and of the Senate. In the third place, it has the approval of a majority of the Reconstruction Committee of this House. Now, are these men all so deceived, and is all virtue—no, I will take that back — is all knowledge of the subject confined to my friends from Illinois, (Mr. Washburne and Mr. Farnsworth,) and my friend from Wisconsin, (Mr. Paine?)

All these arguments, all these statements, all the provisions of this constitution have been submitted to the Judiciary Committee of the Senate, and they have found the constitution republican and proper. This constitution has been submitted to the Senate, and they have found it republican and proper. It has been submitted to your own Committee on Reconstruction, and they have found it republican and proper, and have reported it to this House. Now, if you set the example of going back on the matter of reconstruction, I have no doubt there are a good many ready to follow that example. If I were to follow my own ideas altogether, unrestrained by party associations, upon this as a mere matter of policy, I should doubt very much the policy or rehabilitating any one of these southern States. But I hold it as a question of policy as to when these States should be admitted, and not a question of principle, and upon that I feel bound by my party ties. Therefore I shall vote for this bill. I shall hope to see Florida again represented in Congress. I consider that State more certain for the Union and more determined against rebellion than any other of these States, because into that State have gone a great number of northern emigrants to settle there, and she is more sure for the Union that any other southern State.

(Here the hammer fell.)

Mr. HULBURD. Will the gentleman from

Ohio (Mr. Bingham) yield to me for a few minutes?

Mr. BINGHAM. I will yield to my colleague on the committee for ten minutes.

Mr. HULBURD. Mr. Speaker, when the matter of Florida originally came before the Committee on Reconstruction I concurred with my colleagues on that committee in opposing its admission. And when we originally reported this bill to the House the State of Florida was not embraced in it. There were objections made to the constitution which led me to vote against it.

Since that time the constitution then objected to has been submitted to the people of Florida, and they, as has already been stated, by a vote of nearly two to one, have accepted that constitution, and ratified it so far as they could ratify it. They now ask that we should admit them into the Union under that constitution.

Now, my friend from Wisconsin (Mr. Payne) objects to some of the provisions contained in that constitution, especially the provision conferring so sweeping an appointing power on the Governor. To that argument the gentleman from Massachusetts (Mr. Butler) has very well answered that the appointing power vested in the Governor under the constitution of Florida is no greater than that formerly exercised by the executive in the New England States and in the State of New York. The real reason for

this vesting the appointing power in the Governor of Florida has not yet been stated. I propose briefly to state it, that members of the House may understand the reason for this apparent anomaly.

Among the thirty-nine counties of the State of Florida there are several in which rebel voters are now in the ascendency. If they are allowed to erect their county organizations by electing county officers it will be done by rebel hands, under rebel auspices, and for rebel purposes. Now, there has been vested in the hands of the Governor the power to make these appointments to insure loyal Union organizations in all the counties. Is not that right, and therefore proper? I do not understand that Governor Reed, the Governor-elect, is charged by anybody with being in sympathy at all with disloyalty or rebellion. His nominations, therefore, will be in the interest of loyalty, of patriotism, of Unionism. It is urged that if these appointments are thus made and have four undisturbed years to run all the counties, including the now rebel counties, will become loyalized and Unionized, so that thereafter they will be true and loyal, part and parcel of a loyal State. Is not that desirable? Is it not worth an effort?

* * *

(3093)

Mr. HULBURD. Sir, the people of the State of Florida have not made the tremendous mis-

take that was made at Baltimore in 1864, by selecting for their second officer a thing who cannot be trusted in case the executive power should devolve upon that officer.

Mr. BROMWELL. But does not the whole thing depend upon one man's fidelity; and if he should die is the man who would succeed him as good as he is?

Mr. HULBURD. He is, I believe, an honest and true, capable loyal man. But, sir, this whole objection arises, as I understand, because a citizen of Illinois went down there and did not succeed in obtaining the majority which he expected. When he went before the people and asked that his particular views and representations should be carried out he succeeded in getting elected only six members of the Assembly. If that Illinois man had succeeded in getting the control of the organization of the State doubtless there would have been no objection here now to the admission of the State, for she cannot be kept out longer on any principle of consistency, I had almost said of decency.

Mr. BROMWELL. I wish to say, so far as I am concerned, that it has nothing to do with this matter what the performances of Mr. Richards have been there, and I have never had any idea that his welfare had anything to do with this matter.

Mr. HULBURD. The constitution of Florida was approved by General Meade, and I say now

approved by a majority of the Committee on Reconstruction of this House, who were formerly opposed to its adoption. Is there any good reason, founded on fundamental principle, why this House should not now approve of this bill as amended by the Senate?

Mr. FARNSWORTH. My friend will say when the Committee on Reconstruction approved of this constitution of Florida.

Mr. HULBURD. If it were right I could state what occurred in the committee-room. If my friend will allow me, I will do so.

Mr. FARNSWORTH. I do.

Mr. HULBURD. I understood my friend from Illinois to say in the committee-room this morning that he regarded the constitution of Florida as the best constitution that any of the southern States had adopted.

Mr. FARNSWORTH. The gentleman is entirely mistaken. I never made any remark like that, and the gentleman is mistaken.

Mr. HULBURD. I understood the gentleman to say that it was the best constitution that had been adopted by any of the southern States.

Mr. FARNSWORTH. I never said anything of the kind.

Mr. HULBURD. What, then, was the gentleman's remark and to what did it apply?

Mr. FARNSWORTH. I may have made a remark in reference to Alabama.

Mr. HULBURD. I was under the impression the gentleman also made this remark in reference to the constitution of Florida.

Mr. FARNSWORTH. The gentleman will do me the justice to say that I said nothing of the kind in reference to the constitution of Florida.

Mr. HULBURD. I did so understand the gentleman; but of course I may have been mistaken.

Mr. FARNSWORTH. The Committee on Reconstruction have unanimously and repeatedly declared against this constitution of Florida.

Mr. HULBURD. Yes, they have; but not since the constitution was submitted and sanctioned by the people.

Mr. FARNSWORTH. Repeatedly; and they do now; but they say that we had better admit the State.

The SPEAKER. The ten minutes of the gentleman from New York have expired.

Mr. BINGHAM. I yield to the gentleman from Illinois.

Mr. BAKER. I wish to say, Mr. Speaker, that as this legislation involves some large questions of law and policy, and as three or five minutes are too short a time in which to discuss them, I will content myself with asking leave to print some remarks on this and the Arkansas bill.

There was no objection; and it was ordered accordingly. (See Appendix.)

Mr. BINGHAM. Mr. Speaker, I do not desire to delay the House with an extended discussion of this bill. I desire to obtain the action of the House speedily on the bill; and having stated very briefly my own views touching the bill, and the reasons why it should pass the House, I will call for the previous question.

* * *

(3097)

The question recurred on concurrence in the amendments of the Senate.

Mr. BOYER demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 111, nays 28, not voting 50; . . . .

* * *

So the amendments of the Senate were concurred in."

**June 25, 1868, page 3466, Congressional Globe**

SOUTHERN STATES—VETO.

The message further announced that the President of the United States having returned with his objections the bill (H. R. No. 1058) to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress, to the House of Representatives, in which it originated, the House had, in conformity with the Constitution, proceeded to reconsider the bill, and having passed the same by a two-thirds vote, the objections of the President to the contrary notwithstanding, transmitted it, with the President's objections, to the Senate.

**June 30, 1868, page 3601, Congressional Globe**

We have settled by an act which we passed a few days ago the condition of Florida. We have declared that that State, under a constitution which was submitted to us and examined, was entitled to representation in Congress when she ratified the constitutional amendment known as article fourteen. That act has passed both Houses of Congress and is the law of the land.

**June 30, 1868, page 3602, Congressional Globe**

But we have passed a law by which we have

said to the State of Florida, "You have organized a State government which is entitled to representation in this Congress, and we will receive your representatives when you send them here, and ratify the constitutional amendment which we name the fourteenth article." They send us here the evidence of that fact, and send the members here, and now the Senator from Maine suggests that we shall wait until the Secretary of State proclaims something about it.

**June 30, page 3607, Congressional Globe**

The PRESIDENT pro tempore. The question now is, Shall the Senator from Florida be permitted to take the oaths with a view to take his seat in the Senate of the United States? on which question the yeas and nays have been ordered.

Mr. CORBETT. I desire simply to say that considering the question as having been decided by the Senate, I shall now vote for the admission of the Senator from Florida.

The question being taken by yeas and nays, resulted—yeas 34, nays 6.

* * *

So the motion was agreed to.

The PRESIDENT pro tempore. The Senator-elect from Florida will please come forward and receive the oaths.

Mr. Osborn advanced to the desk of the President **pro tempore**, and the oaths prescribed by the Constitution and the act of July 2, 1862, having been administered to him he took his seat in the Senate.

**June 30, 1868, page 3614, Congressional Globe**

## MEMBER-ELECT FROM FLORIDA

MR. STEVENS, of Pennsylvania. I present the credentials of Hon. Charles M. Hamilton, Representative-elect from the State of Florida, and I ask that he be sworn in.

MR. MAYNARD. I move that the credentials take the usual course, and be referred to the Committee on Elections.

This motion was agreed to.

* * *

**July 1, 1868, page 3655, Congressional Globe**

## SWEARING IN OF A MEMBER

CHARLES M. HAMILTON, a member-elect from the State of Florida, appeared and was duly qualified as a member of the House of Representatives by taking the oath prescribed by law.

* * *

**July 2, 1868, page 3672, Congressional Globe**

## SENATOR FROM FLORIDA.

Mr. HOWARD. I rise to a privileged ques-

tion. I present the credentials of Hon. A. S. Welch, one of the Senators recently elected by the Legislature of Florida a Senator in the Senate of the United States. I move that he be sworn in, and that the credentials be read.

The Secretary read the credentials,

* * *

The PRESIDENT **pro tempore.** It is moved and seconded that the Senator-elect from Florida be permitted to take the oaths.

The motion was agreed to.

The oaths prescribed by the Constitution and laws were administered to Mr. Welch, and he took his seat in the Senate.

**14 EXTRACT FROM LETTER OF ED. R. S. CANBY, BREVET MAJOR GENERAL, TO THE ADJUTANT GENERAL, DATED JULY 10, 1868 (executive Document No. 13 of the 2nd Session 41st Congress, pages 16-19):**

It will be seen, by General Orders Nos. 79 and 83, headquarters second military district, dated respectively May 2 and May 12, 1868, that the same decision was made more than a year ago, and that the members of the legislature and other elective officers under the constitution of the State, embraced in that district, who were unable to take the oath of office prescribed by law, would not be allowed to discharge any offi-

cial functions "until the disability has been removed by Congress, or unless the oath of office prescribed by the above-cited law (of July 19, 1867) shall have previously been dispensed with by law, or unless the said ninth section shall have become inoperative by the fact that the people of the State have been declared by law to be entitled to representation in the Congress of the United States;" and by General Orders No. 117, of June 26, and No. 120, of June 30, 1868, **that the laws of June 25, 1868, approving the constitution of several States** and authorizing certain action under them, was held to supersede or dispense with the oath of office prescribed by the law of July 2, 1862, and required by the ninth section of the law of July 19, 1868.

* * *

On the contrary, the joint resolution of February 6-18, 1869 and the passage of the law of April 10, 1869, before the approval of the constitution by Congress, and without dispensing with the requirement of the ninth section of the law of July 19, 1867, or prescribing another form of oath, appears to express very clearly the intention of Congress that this requirement should be enforced until the constitution **had been examined and approved by that body.** . . . With two exceptions, all the decisions of the General of the Army relating to the qualifications of voters or officers that I have been able to find were made subsequent to the passage of the law of **June 25, 1868, and applied to the**

**constitution which had already been approved by Congress.**

. . . . . The second is that of April 29, 1868, in relation to Georgia, and also applies to the qualifications of officers, and the enforcement of the test oath **after the approval by Congress of the proposed constitution.** . . . .

In the second military district I held that if the legislature of a State assembled before its constitution had been approved by Congress, it must do so under the conditions imposed by the reconstruction laws; and, to avoid the embarrassment resulting from this complication, the meeting of the legislature of South Carolina, as appointed by the convention, was postponed by General Orders No. 82, of May 12, 1868, "until after the Congress of the United States **shall have approved the constitution under which it was elected.**" The decisions, June 30 and July 8, 1868, although applying to the qualifications of officers after the approval of the constitution under which they were elected, are decided as to the character of the governments, until the conditions of reconstruction are fully complied with.

**15 EXTRACT FROM LETTER OF GENERAL GEORGE G. MEADE TO BREVET MAJOR GENERAL JOHN A. RAWLINS, DATED OCTOBER 31, 1868 (Executive Document No. 13, 2nd Session, 41st Congress, pages 22-30):**

The election for members of the constitu-

tional convention in Florida, having been held under the direction of my predecessor, he had advised the assembling of the same on the 20th of January, 1868. Prior to the assembling of the convention, I had referred to me, by the President of the United States, a memorial, sent to him by the provisional governor of the State, and signed very unanimously by prominent citizens, in which the gravest charges were brought against the managers of the election, involving frauds of all kinds, and even charging the registration of the State, and the districting of the same, as having been fraudulently executed, the memorialists urging me to interpose my authority, suspend the meeting of the convention, and proceed to investigate the charges which they pledged themselves to prove. Upon examination of the law I could find no remedy short of congressional action, even should their grave charges be proved. I therefore made no change in the period fixed for the assembling of the convention, but ordered a board of officers to investigate the charges, notifying the memorialists of my action, and pledging myself to place before Congress all the testimony they might put before the board. It is hardly necessary to say, that when it was found the convention was allowed to meet and do its work the board had little to do; and after remaining in session for some weeks, and calling without avail on the signers of the memorial for their evidence, the board closed its session without having any charge proved of all those made. The convention met,

but soon after meeting there arose dissentions and bickerings, resulting in the secession of a large part of the convention, and the claim of both parties to be regarded as the legitimate convention. For some time I allowed these dissentions to proceed, not seeing clearly how I could act until I had found that the convention which had originally assembled, and which I had recognized as the legitimate body, had, by the secession of its members, been reduced below a legal quorum. When this arrived, I required this body either to bring in sufficient members to give them a legal quorum, or, failing in that, to accept certain terms of compromise, which, after reflection, I deemed just to both parties; or if this failed, I intimated I should assume the authority and proceed, in view of the impossibility of harmonizing the difficulties, to adjourn both conventions, and refer the points in dispute to Congress for such action as it might deem proper to take. The compromise proposition having been accepted, the two parts of the convention assembled, reorganized, and proceeded to frame a constitution, **which was subsequently ratified by the people and adopted by Congress.**
(Emphasis added)

**16 EXTRACTS FROM LETTER OF ED. R. S. CANBY, BREVET MAJOR GENERAL, TO B. W. GILLIS, RICHMOND, VIRGINIA, DATED JUNE 26, 1869 (EXECUTIVE DOCUMENT NO. 13, 2nd Session, 41st Congress, pages 20-22):**

First: That I have uniformly held that mem-

bers of the general assembly and State officers, to be elected on the 6th proximo, would be required to take, before entering upon the duties of their offices, the oath prescribed by the law of July 2, 1862, **unless the constitution should first be approved by Congress**, or the oath be otherwise dispensed with by law.

* * * *

I have heretofore held and do now hold that **the approval by Congress of any proposed constitution makes it a part of the reconstruction laws**, and, to the extent that Congress directs or authorizes any action under it in advance of the admission of the State, dispenses with the provisions of any previous laws that conflict with it.

* * *

It is similar in import, and refers to the dispatch of March 2, and this has probably led to the confusion of dates. It is in answer to a communication from the commander of the third military district, and applies directly and apparently exclusively to the second paragraph of General Orders No. 61, third military district, of May 15, 1868, which provides that "inasmuch as said general assembly, should the constitution now submitted to the people of the State be ratified by them and be approved by Congress, is required to convene and adopt the proposed amendment to the Constitution designated as Article XIV before the State can be admitted to representation in Congress, it may

be decided that the members of the said general assembly are, while taking this preliminary action, officers of a provisional government, and as such required under the ninth section of the act of Congress of July 19, 1867, to take the test oath.

This decision must also be interpreted by the decision of January 13, and this I apprehend to be the proper rule of interpretation of all the correspondence upon this subject, as I have been unable to find any case in which the inquiry and answer did not relate to the status of these officers **after** the approval by Congress of the constitution under which they were elected. **The law of June 25, 1868, approving the constitutions of several States,** and authorizing specific action under them, was regarded by me as dispensing with the oath of office prescribed by the law of July 2, 1862, first as to the members of the general assembly, and, after the ratification of the constitutional amendment, to the other State officers duly elected and qualified under those constitutions.

* * *

. . . The qualification of the officers rests upon the same basis, and must be governed by the reconstruction laws until the constitution becomes the controlling law, and this does not obtain until it has been approved by Congress. . . . .

(Emphasis added)

* * *

## 17 INTERNATIONAL LAW; SUBMERGED LANDS, TERRITORIAL WATERS AND BOUNDARIES.

The following statements on international law, relative to submerged lands, territorial waters and national boundaries, were made by recognized authorities on international law as indicated:

**A. Emmerich de Vattel's "Le Droit des Gens"** (London 1758), is a celebrated work on international law of the second half of the eighteenth century. Vattel made the following statement with regard to territorial waters and fishing rights (Professor Fenwick's translation, Volume III, pages 107 and 108):

"The various uses to which the sea near the coasts can be put, render it a natural object of ownership. Fish, shells, pearls, amber, etc., may be obtained from it. Now, with respect to all these things, the resources of coast seas are not inexhaustible, so that the Nation to which the shore belongs may claim for itself an advantage thus within its reach and may make use of it, just as it has taken possession of the lands which its people inhabit. Who can doubt that the pearl fisheries of Bahrein and Ceylon may be lawful objects of ownership? * * *

It is not easy to determine just what extent of its marginal waters a Nation may bring within its jurisdiction . . . But between Nation and Nation the most reasonable rule that can be laid down is that in general

the sovereignty of a State over its marginal waters extends as far as is necessary for its safety and as far as it can be effectively maintained; because on the one hand a Nation may appropriate only so much of common property, like the sea, as it has need for some lawful end, and, on the other hand, it would be an idle and ridiculous pretension to claim a right which a Nation would have no means of enforcing . . ."

**B. George Friedrich von Martens' "Precis du Droit des Gens Moderne d' Europe,"** published in French in 1789 and translated into English by William Cobbett in 1795 under the title of "Summary of the Law of Nations," makes the following statement, according to the Cobbett translation, page 160:

"A custom, generally acknowledged, extends the authority of the possessor of the coast to a cannot shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominions on the seas."

Martens, according to the translation, stated that:

"A nation may occupy and extend its dominions, beyond the distance maintained in the last section . . . and such dominion may, if national security requires it, be maintained by fleet of armed vessels."

Later, on page 165 of the translation, he makes the statement that the exclusive right of the coastal state to all sea products is recognized

" . . . within the distance of three leagues."

A German Edition of Von Martens published in 1796 at page 46 states:

"Pfeffel in Principes du droit naturel, bk. 3, chap. IV, sec. 15, indicates the distance of three leagues as the now universal principle. This principle is now incorporated in many treaties, even though no cannon reaches that far, especially over the sea."

Martens, "Precis du droit des gens moderne de l'Europe", (2d ed., Paris, 1801), pp. 71-2, makes this statement:

"Today all nations of Europe agree that, as a rule, the straits, gulfs and the marginal sea belong to it (the coastal state), at least as far as a cannon, placed on the shore, would carry. In a number of treaties the more extended principle of three leagues has even been adopted."

Riesenfeld makes the further comment regarding Von Martens on page 29 of his work:

"It is probably no exaggeration to state that G. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German editions of his work. River calls him in his well-known Esquisse d'une histoire litteraire des systemes et methodes du droit des gens depuis Grotius jusqu'a nos jours, the true originator of the systematic and scientific study of the positive law of nations.

Of the writers who succeeded him only a few war-

rant such high praise. Many of them have fallen into a deserved oblivion." * * *

**C. Joseph M. G. de Rayneval in his "Institutions du droit de la nature et des gens"** (Paris 1803), states that:

"The sea which washes the shores of a state is deemed to form a part thereof; its safety and tranquility render this property necessary; the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.

But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

In the 3rd Edition of Rayneval's works, edited by his son in 1832, we read (page 300):

"But the extent of this property is not determined by a uniform rule: some fix it at a hundred miles, others at sixty, and still others at three."

**D. Riesenfeld in his "Protection of Coastal Fisheries under International Law,"** on page 33, states that:

"8. In his Das Europaische Volker-Recht (Berlin, 1817, pp 140-1) Theodore A. Schmalz distinguished

between the territorial sea in Europe and in the colonies, his theory being quite similar to that of B. S. Nau. While in the colonies large belts of the ocean were claimed, in Europe the practice was to the effect that the sea could be appropriated only within a cannon's range, a distance which arbitrarily, as he said, had been fixed at three leagues (lieues). One may note his reference to leagues instead of miles.

9. Julius Schmelzing, Systematischer Grundriss des praktischen Europaischen Volker-Rechtes (Rudolstadt, 1818) adopted Schmalz's statement almost verbatim (vol. 2, p. 13). In addition he cited Pfeffel who also had been von Martens' authority for the adoption of the three-league limit.

10. The celebrated Johann L. Kluber accepted the cannon-shot rule as the measure for the territorial sea in his Droit des gens moderne de l'Europe (Stuttgart, 1819, p. 200), but he noted that in many treaties—as for instance the Treaty of Paris (1763)—three leagues were accorded."

**E. James Kent wrote his "Commentaries on American Law"** in 1896 and on page 29 of this work, states that:

"It is difficult to draw any precise or determinate conclusion, amidst the variety of opinion, as to the distance to which a state may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbours, gulfs, bays and estuaries, and over which its jurisdiction unquestionably extends."

He then went on to state that "all that can rea-

sonably be asserted is that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety, and for some lawful end."

**F. G. Masse in 1844 published his "Le Droit Commercial Dans ses Rapports Avec le Droit des Gens"** (Paris, 1844, Vol. 1, pp 114-15) and recommended the three-mile rule as the limit of the territorial sea, but he concluded (Vol. I, p. 14 and 15):

> "However, in practice this logical rule is not followed. Each people determines a certain distance in the ocean within which it exercises its authority and which constitutes the territorial sea for all who admit this determination. For the French coasts this distance amounts to two myriameters or five leagues in virtue of a customs law of the fourth of Germinal of the Year 11 (since the French revolution). Vessels that enter within such a radius and the merchandise they carry immediately become subject to French customs law. A great number of treaties fix this distance at 3 leagues."

**G. In his "Draft Outlines of an International Code,"** published at New York in 1872, David Dudley Field adopted the view that territorial waters extended as far as three marine leagues (§28). The same rule was stated in the second edition of his Code (New York, 1876, §28).

**H. William E. Hall published his celebrated "International Law"** (Oxford 1880) in the lat-

ter one-half of the 19th Century. On page 126 he makes the following statement with respect to marginal waters:

"Generally their limit is fixed at a marine league from the shore; but this distance was defined by the supposed range of a gun of position, and the effect of the recent increase in the power of artillery has not yet been taken into consideration, either as supplying a new measure of the space over which control may be efficiently exercised, or as enlarging that within which acts of violence may be dangerous to persons and property on shore. It may be doubted, in view of the very diverse opinions which have been held until lately as to the extent to which marginal seas may be appropriated, of the lateness of the time at which much more extensive claims have been fully abandoned, and of the absence of cases in which the breadth of territorial water has come into international question, whether the three-mile limit has ever been unequivocally settled; but in any case, as it has been determined, if determined at all, upon an assumption which has ceased to hold good, it would be pedantry to adhere to the rule in its present form; and it is probably safe to say that a state has the right to extend its territorial waters from time to time at its will with the increased range of guns."

I. The American writer **Edwin F. Glenn in his "Handbook of International Law"** (St. Paul 1895) takes the following position:

"The jurisdiction of a state over its marginal waters extends from the shore to such distance as the power of the state is effective, the generally accepted dis-

tance, being a marine league (3½ English miles), is determined by the effective range of cannon . . . At the present time, however, the effective range of cannon has been very much increased, and modern guns are effective for at least double this distance; and there can be little, if any, doubt as to the absolute right of a state to extend its territorial waters to correspond with this increased range (p. 59)."

**J. Gilbert Gidel in his celebrated treatise "Le Droit International Public de la Mer"** published in Paris in 1934, gave a very comprehensive treatment to the entire question regarding the extent of the territorial seas. In volume III, page 151, he says:

"The alleged three-mile rule was the chief victim of the Conference (i.e. the Hague Codification Conference of 1930). Since then it is impossible to speak of the three-mile rule as constituting a rule of general positive international law. It can only be a rule governing internal affairs, for a certain number of states which have adopted it for the purpose of regulating a certain number of interests; the three-mile rule, as a rule of international law, can be no more than a conventional rule, applicable in the relations between the states which have bound themselves expressly to observe it. The three-mile rule exists only as a minimum rule with respect to the extent of the territorial sea. It is not a rule of international law without qualification . . ."